178

No. 10-795

Supreme Court, U.S.
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IN THE

Supreme Court of the United States

GREEN PARTY OF CONNECTICUT, ET AL.,

Petitioners,

—v.—

ALFRED P. LENGE, ET AL.,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

Whether Connecticut's campaign finance law discriminates against minor party candidates by imposing qualifying requirements for public financing that are more onerous than any others in the nation, and that are not necessary to prevent factionalism or preserve the public fisc, coupled with a trigger provision that effectively penalizes minor party candidates who reach a threshold level of contributions by awarding their major party opponents an offsetting grant that will often far exceed what the minor party candidate has raised and spent.

PARTIES TO THE PROCEEDING AND CORPORATE DISCLOSURE STATEMENT

The Green Party of Connecticut, S. Michael DeRosa, Libertarian Party of Connecticut, Elizabeth Gallo, Joanne P. Philips, Roger C. Vann, and Ann C. Robinson were plaintiffs below and are petitioners in this proceeding.

Alfred P. Lenge, in his official capacity as Executive Director and General Counsel for the State Elections Enforcement Commission, and Richard Blumenthal, in his official capacity as Attorney General were defendants below and are respondents in this proceeding.

Audrey Boudin, Common Cause of Connecticut, Connecticut Citizen Action Group, Kim Hynes and Tom Sevigny, were intervenor-defendants below and are respondents in this proceeding.

In a second opinion issued on the same day, the Second Circuit upheld certain restrictions on campaign contributions by contractors and lobbyists, and struck down others. The parties on the two appeals overlapped but were not identical. The parties identified above are the parties to the relevant public financing appeal. (Barry Williams was erroneously listed in the caption of this case by the Second Circuit, as a plaintiff-appellee.) Alfred P. Lenge replaced Jeffrey Garfield as Executive Director and General Counsel for the State Elections Commission, and was substituted as a party-defendant by the district court pursuant to Fed. R. Civ. P. 25(d).

Following the Second Circuit decision, Dan Malloy, a candidate for Governor, was granted intervention by the district court to address the

severability issue, which has since by mooted by legislative action. Since Mr. Malloy was not a party on the Second Circuit appeal, he is not listed in the caption but his counsel has been served with a copy of this application.

None of the petitioners has a parent corporation or issues any stock.

TABLE OF CONTENTS

QUESTIONS PRESENTED i

PARTIES TO THE PROCEEDING AND CORPORATE DISCLOSURE STATEMENT ii

TABLE OF CONTENTS iv

TABLE OF AUTHORITIES vi

OPINIONS BELOW 1

JURISDICTION 1

STATUTORY PROVISIONS INVOLVED 1

STATEMENT OF CASE 1

A. Connecticut's Citizen's Election Program 3

1. *Qualifying Criteria* 3

2. *Applicable Grants* 5

3. *Expenditure Limits* 7

4. *The Minor Party Trigger Mechanism* ... 7

B. The Proceedings Below 8

1. *The District Court Decision* 8

2. *The Court of Appeals Decision* 15

REASONS FOR GRANTING THE WRIT 19

I. The Discriminatory Treatment of Minor Party Candidates Under Connecticut's Campaign Finance Law Is Inconsistent With *Buckley* And This Court's Campaign Finance Jurisprudence 21

II. The Minor Party Trigger Provision Upheld Below Is Inconsistent With Both *Davis* and *Buckley* 28

III. The Second Circuit Decision Conflicts with the Three-Judge District Court Decision in *Bang v. Chase* Involving the Statewide Qualification Criteria 30

IV. This Case Raises Issues of National Significance Concerning The Treatment of Minor Parties 31

CONCLUSION 33

APPENDIX 1a

Relevant Provisions of Connecticut's Campaign Finance Law, "An Act Concerning Comprehensive Campaign Finance Reform for State-Wide Constitutional and General Assembly Offices," P.A. 05-05, codified at Conn. Gen. Stat. §§ 9-700-718; 9-750-751 ..... 1a-80a

Decision of the United States Court of Appeals for the Second Circuit, July 13, 2010 ..... 81a-164a

Memorandum Decision and Order of the District Court and Appendix, August 27, 2009 ..... 165a-472a

District Court Ruling on Motion to Dismiss and Motion for Judgment on the Pleadings, March 20, 2008 ..... 473a-552a

TABLE OF AUTHORITIES

Cases

Bang v. Chase,
442 F. Supp. 758 (D. Minn. 1977), *aff'd*
Bang v. Noreen, 436 U.S. 941 (1978) .. 12, 18, 20, 30

Buckley v. Valeo, 424 U.S. 1 (1976) ..... *passim*

Daggett v. Comm'n on Governmental Ethics & Election Practices, 205 F.3d 445 (1st Cir. 2000) ... 31

Davis v. Federal Election Comm'n, ___ U.S. ___, 128 S.Ct. 2759 (2008) 15, 20, 29, 30

First Nat'l Bank of Boston v. Bellotti, 435 U.S. 765 (1978) 28

McComish v. Bennett, 611 F.3d 510 (9th Cir. 2010), *cert. granted*, __ S.Ct. ___ (Nov. 29, 2010) (No. 10-239) ..... *passim*

North Carolina Right to Life Committee Fund for Independent Political Expenditures v. Leake, 524 F.3d 427 (4th Cir. 2008) 31

Randall v. Sorrell, 548 U.S. 230 (2006) 22

Rosenstiel v. Rodriguez, 101 F.3d 1544 (8th Cir. 1996) 32

Williams v. Rhodes, 393 U.S. 23 (1968) 23, 28

Statutes and Rules

28 U.S.C. § 1254(1) 1

Conn. Gen. Stat. 1

§ 9-702(c) 6, 7

§ 9-704(a) 3

§ 9-704(a)(1) 3

§ 9-704(a)(2) 3
§ 9-704(a)(3) 4
§ 9-704(a)(3)(B) 3
§ 9-704(a)(4) 4
§ 9-705(a)(1) 5
§ 9-705(a)(2) 6
§ 9-705(b)(1) 5
§ 9-705(b)(2) 6
§ 9-705(c)(1) 4
§ 9-705(c)(2) 5
§ 9-705(c)(3) 5
§ 9-705(e)(1) 5
§ 9-705(e)(2) 6
§ 9-705(f)(1) 5
§ 9-705(f)(2) 6
§ 9-705(g)(1) 4
§ 9-705(g)(2) 5
§ 9-705(g)(3) 5
§ 9-705(j)(3) 6
§ 9-705(j)(4) 6, 7, 29
§ 9-710 7
§ 9-710(c) 7
Fed. R. Civ. P. 25(d) ii

OPINIONS BELOW

The opinion of the court of appeals (App. 81a-164a) is reported at 616 F.3d 213 (2d Cir. 2010). The final judgment of the district court (App.165a-472a) is reported at 648 F.Supp.2d 298 (D.Ct. 2009). The opinion of the district court denying the motion to dismiss (App. 473a-552a) is reported at 537 F. Supp. 2d 359 (D.Ct. 2008).

JURISDICTION

The judgment of the court of appeals was entered on July 13, 2010. On September 21, 2010, Justice Ginsburg extended the time for filing a petition for certiorari to December 10, 2010. The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

STATUTORY PROVISIONS INVOLVED

The relevant provisions of Connecticut's campaign finance law, "An Act Concerning Comprehensive Campaign Finance Reform for State-Wide Constitutional and General Assembly Offices," P.A. 05-05, codified at Conn. Gen. Stat. §§ 9-700-718; 9-750-751, are reprinted in the Appendix at App. 1a-80a.

STATEMENT OF CASE

The Citizen's Election Program ("CEP") was adopted as a part of a broad legislative revision of Connecticut's campaign finance statutes. "An Act Concerning Comprehensive Campaign Finance Reform for State-Wide Constitutional and General Assembly Offices," P.A. 05-05, codified at Conn. Gen. Stat. §§ 9-700–718, 9-750–751. App. 1a-80a. The CEP

establishes a voluntary system of public financing that applies to all state elections held after December 31, 2006. Connecticut is one of only three states in the nation to provide full public financing for all state elections. Maine and Arizona are the others, but unlike the so-called "Clean Elections" models adopted in those states, the Connecticut law discriminates against minor party and independent candidates (hereafter "minor party candidates") in numerous ways that unfairly limit their participation in the program.

In Connecticut, candidates seeking public funding must first raise thousands of dollars in small contributions (the amount varies by office). However, unlike the Maine and Arizona systems that rely solely on qualifying contributions to measure a candidate's level of public support, under the CEP a minor party candidate must have also received at least 10% of the vote in the prior election or satisfy an onerous petitioning requirement to qualify even for partial funding. Quite apart from the fact that the prior vote requirement is twice the threshold upheld in *Buckley v. Valeo*, 424 U.S. 1 (1976), all the evidence shows that the contribution requirement, by itself, would filter out weak candidates and that the additional criteria are unfairly burdensome. No other state in the nation imposes such stringent qualifying criteria.

Shortly after the enactment of the CEP, the Green and Libertarian Parties of Connecticut brought this action against Jeffrey Garfield, the Director of the State Elections Enforcement Commission, which is the agency responsible for administering the program. A number of individuals and advocacy groups were allowed to intervene as

defendants in support of the CEP. The district court struck down the CEP in its entirety. App. 165a-350a. A divided court of appeals agreed that the statute's so called trigger provisions – one based on independent expenditures and one based on "excess" expenditures by nonparticipating candidates – were unconstitutional, but rejected the claim that the statute's remaining provisions discriminated against minor party candidates. App. 81a-164a. The case was remanded to determine whether the excess and independent expenditure trigger provisions could be severed from rest of the statute -- especially in light of the statute's explicit anti-severance provision. The district court certified the issue to the Connecticut Supreme Court, but vacated its Order when the legislature came into special session on August 13, 2010 and repealed those provisions. Their validity is no longer at issue in this litigation.

A. Connecticut's Citizen's Election Program

1. *Qualifying Criteria*

All candidates, irrespective of party affiliation, must raise a specified amount of money in "qualifying contributions" from a specified minimum number of individuals.[1] Candidates for governor must raise $250,000 in qualifying contributions, of which at least $225,000 must come from Connecticut residents. Conn. Gen. Stat. § 9-704(a)(1), App 14a. All other candidates for statewide offices must obtain $75,000 in qualifying contributions, including at least $67,500 from state residents. *Id.* § 9-704(a)(2),

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[1] Qualifying contributions cannot exceed $100. Conn. Gen. Stat. § 9-704(a), App. 14a In order for a contribution to be counted, the contribution must be at least $5. § 9-704(a)(3)(B), App. 16a.

App. 15a State senate candidates are required to raise an aggregate of $15,000, including at least 300 contributions from residents of the district. *Id.* § 9-704(a)(3), App.15a. Candidates for state representative must raise an aggregate of $5,000, including at least 150 contributions from residents of the district. *Id.* § 9-704(a)(4), App.16a.

Major party candidates who collect the required amount of money in qualifying contributions are automatically entitled to public financing.[2] All other candidates are held to a different qualifying standard. In addition to collecting the requisite number of qualifying contributions, they can only qualify for funding based on their vote total in the prior election or if they satisfy onerous petitioning requirements. Candidates who do not meet these requirements cannot qualify even for post-election funding based on a strong showing in the polls.

Under the prior vote total requirement, a "minor-party candidate" becomes eligible to receive public funding if that candidate, or another member of her party, received a certain percentage of the vote in the previous general election for the same office. §§ 9-705(c)(1), (g)(1), App.21a, 28a. To receive a one-third CEP grant, the candidate or party member must have received at least 10% of the vote in the preceding general election. To be eligible for a two-thirds grant or a full grant, the prior vote

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[2] A major party is defined as a political party whose candidate for Governor in the last-preceding election received at least twenty percent of the votes cast for that office or has a twenty percent of the enrolled registered voters in the state. App.194a

requirement increases to 15% and 20%, respectively. *Id.*[3]

Minor party candidates who are not eligible under the prior vote total requirement can also qualify if they meet the requirements applicable to "petitioning candidates" set forth in *Id.* §§ 9-705(c)(2) & (g)(2), App. 22a, 29a. These provisions exist primarily for the benefit of new party and independent candidates. Under these provisions, petitioning candidates can qualify for a one-third grant by collecting signatures equal to 10% of the votes cast in the previous election for that office. To obtain a two-thirds grant or a full grant, the signature requirement increases to 15% and 20%, respectively. *Id.* The State Elections Enforcement Commission ("SEEC") has interpreted this provision to allow "minor party" candidates to qualify in this manner if they are not eligible under the prior vote total requirement. App. 197a

2. *Applicable Grants*

Major party candidates who are opposed in the primary can qualify for public financing. The amount of the grant will vary depending on the office being sought and whether the election occurs in a party dominant district. Conn. Gen. Stat. §§ 9-705(a)(1), (b)(1),(c)(1),(f)(1), App. 20a-21a, 26a-27a (defining applicable primary grants). There is no provision in the statute for primary election grants to minor party candidates.

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[3] Minor party candidates who qualify for a partial CEP grant prior to the election and then receive a vote total entitling them to a higher grant level can receive a supplemental, post-election grant. Conn. Gen. Stat. §§ 9-705(c)(3), (g)(3) App.24a, 30a.

Major party candidates who successfully secure their party's nomination then qualify for financing in the general election in the following amounts: $6 million for gubernatorial candidates,[4] $750,000 for other statewide offices, $85,000 for state senate candidates, and $25,000 for candidates for state representative. *Id.* §§ 9-705(a)(2), (b)(2), (e)(2), (f)(2), App. 20a-21a, 26a-27a.[5] The grant schedule for qualified minor parties is different. They are categorically shut-out of the program unless they cross the 10% mark under the prior vote and petitioning provisions and can only qualify for a full grant if they cross the 20% mark.

Participating CEP candidates are prohibited from raising funds other than qualifying contributions with the exception that a partially-funded candidate may continue to raise funds up to the amount of the grant issued to his major-party opponent. *Id.* § 9-702(c), App. 8a-9a. Such funds must be raised in amounts less than $100. *Id.* In addition, candidates cannot borrow money or use personal funds to make up the difference between major and minor party funding; use of loans or personal funds

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[4] Following the Second Circuit decision striking down the matching fund grants, the statute was amended to increase the base grant for Governor from $3 million to $6 million. § 9-705(a)(2), App. 20a. 2010 Conn.Public Act 10-1 (July 2010 Spec.Sess.).

[5] The amount of the grant is reduced to 30% of the applicable amount set forth above if a candidate runs unopposed. Conn. Gen. Stat. § 9-705(j)(3), (4), App. 33a. If the candidate's only opponent is a minor or petitioning party candidate, the grant is reduced to 60% of the applicable grant. *Id.*

is limited to nominal amounts needed to jumpstart campaigns. *Id.* § 9-710, App. 50a-51a.

3. *Expenditure Limits*

By participating in the CEP and accepting public funds, candidates agree to accept certain limits on the total amount of money they may spend on their campaigns. In essence, candidates that participate in the CEP may spend only the amount they receive in public funds, plus the amount they raise through the required "qualifying contributions." *See* Conn. Gen. Stat. § 9-702(c). App.8a. Participating candidates are also permitted to spend a nominal amount of their own personal funds to facilitate the qualifying process. *See id.*, § 9-710(c), App.51.

4. *The Minor Party Trigger Mechanism*

In addition to the excess and independent expenditure provisions that were struck down by the Court of Appeals and subsequently repealed, the CEP contains a separate matching fund provision that is triggered by contributions to minor party candidates only. Under this provision, once a minor party candidate raises more than a specified minimum amount of money, the amount of his opponent's grant is automatically increased. See Conn. Gen Stat § 9-705(j)(4), App. 33a. ("minor party trigger provision"). In a senate election, for instance, if the minor party candidate raises as little as $15,000, his opponent's grant will increase from $51,000 to $85,000. *Id.*

This provision only applies in elections that are uncontested by a second major party candidate. *Id.* Approximately 40% of the State's legislative districts are affected by this provision. App. 219a,

227a In these districts, major party candidates initially receive 60% of the otherwise applicable public financing grant in recognition of the fact that expenditures are significantly less than expenditures in elections contested by both major parties. *See* fn. 5, *supra*. The full grant is restored, however, once the minor party candidate has raised an amount equal to the qualifying contributions for that office. The trigger provision applies, however, regardless of whether the minor party candidate satisfies the other requirements for public funding. If not, a minor party candidate who raises $15,000 for a state senate election will trigger an additional $34,000 grant to his publicly financed, major party opponent. A minor party candidate who qualifies for a 1/3 grant by meeting the prior vote or petitioning requirements will receive $28,333, but the $34,000 additional grant provided to his major party opponent still represents more than a one-to-one match.[6] Under either scenario, therefore, the effect of the trigger provision is to widen the financial gap between the major and minor party candidates. The $100 contribution limit, moreover, makes it almost impossible to close that gap from other funding sources.

B. The Proceedings Below

1. *The District Court Decision*

Following a bench trial held after the inaugural run of the CEP in November 2008, the district court issued a 138 page decision finding that

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[6] The effect is even more pronounced in the governor's race. If a minor party candidate raises more than $250,000 but fails to qualify for public funding, *see e.g.* n.8, *infra*, the public grant to his major party opponent is nonetheless increased from $3.6 million to $6 million. *See* n.4, *supra*.

the CEP discriminates against minor parties because the qualifying criteria and funding scheme give major party candidates an unfair campaign advantage that could not be justified by the state's acknowledged interests in preserving the public fisc or preventing unrestrained factionalism. App. 170a, 294a-312a. The district court properly framed the issue as whether the CEP "unfairly or unnecessarily burden[s] the political opportunity of any party or candidate." App. 250a citing, *Buckley*, 424 U.S. at 96. Using *Buckley* as its guide the court focused its analysis on whether minor party candidates have a legitimate opportunity at qualifying for a CEP grant and whether the funding scheme gives major parties an unfair advantage in ways that represent a severe burden on minor parties. App. 259a-260a.

The court found that for all practical purposes minor party candidates did not have a legitimate shot at qualifying for a grant. The court made explicit findings based on undisputed evidence that the legislature knowingly chose to set the prior vote total requirement at vote levels that very few minor party candidates have historically attained, thus ensuring most minor party candidates would need to qualify for the CEP under the petitioning requirement. App. 168a-169a, 277a-278a.[7] In turn,

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[7] In the three election cycles covering the period prior to the implementation of the CEP, there were 179 minor party candidates on the ballot, but only 25 of those candidates received at least 10% of the vote. Only four minor party candidates received over 20% of the vote, or approximately one General Assembly candidate per election cycle. App. 277a. Almost all of these candidates (23 of 25) ran in legislative districts contested by only one major party candidate. App. 278a.

the evidence in the record established the CEP's petitioning requirement thresholds are nearly impossible to achieve given the minor parties' general lack of organizational structure, the great expense of a petition drive in the absence of a sufficient volunteer network, the CEP's prohibition on hiring professional canvassing services "on spec," and the general difficulties faced by unknown minor party candidates who cannot benefit from either name recognition or party identification when seeking the signatures of registered voters of that district. App. 169a, 278a-287a.[8]

The district court also found that even if a handful of candidates do overcome the expense of qualifying, the grants are structured in a way that locks in the advantages of major-party candidates. The main example cited by the court involves the minor party trigger provision. App. 287a-289a. The court found that this provision discourages minor party candidates from participating, or even attempting to participate in the CEP, by releasing significant additional funding to the participating major party opponent once the minor party candidate reaches a minimal level of fundraising. *Id.* In addition, the court found that candidates who qualify for partial grants cannot realistically close the funding gap because they are hamstrung by a $100

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[8] Allowing for an acceptable cushion, a candidate for governor would have to collect over 168,511 signatures to qualify for a partial grant and over 337,024 for a full grant. App. 279a-280a. The evidence showed that the cost of collecting this number of signatures would far exceed the amount of money the candidate is allowed to raise and spend under the CEP's expenditure limits -- which is limited to the amount the candidate raises in qualifying contributions. App. 8a, 282a-284a.

contribution limit imposed as a condition of receiving the grant. *Id*

Moreover, unlike the public financing model upheld in *Buckley*, the district court found that the CEP's qualifying and grant distribution terms are discriminatory not only because they treat the parties differently, but because the program's terms have the effect of "slant[ing] the political playing field" in a way that operates primarily to the benefit of major party candidates. App. 261a-262a. The district court engaged in a careful analysis of the CEP, both textually and in the context of Connecticut's electoral history as a party-dominant state. App. 217a-244a, 261a-276a. Quite apart from the statute's explicitly different treatment of minor parties, the evidence showed that the CEP would substantially improve the position of major party candidates by inflating their actual political strength in the state relative to other candidates. App. 269a.[9]

In reaching this conclusion, the court focused on two factors. First, the court found that the use of the gubernatorial election as a standard for major party designation – and full public funding -- artificially enhances the political strength of many major party General Assembly candidates by disregarding the level of public support for those candidates within their actual legislative district. App. 275a-276a. In the past three election cycles, in nearly half of the legislative districts, one of the major parties has either abandoned the district or its candidate has received less than 20% of the vote.

[9] The findings were supported by a detailed appendix compiled by the district court and incorporated in its final decision. App. 351a-472a.

App. 269a-276a. Relying, in part, on this Court's summary affirmance in *Bang v. Chase*, 442 F. Supp. 758 (D. Minn. 1977), *aff'd Bang v. Noreen*, 436 U.S. 941 (1978), the district court concluded that the CEP distorts the strength of many major party candidates who have otherwise failed to establish any degree of success in a particular district by removing the inhibiting factors that previously deterred candidates from running in that district, such as lack of public support or inability to raise the necessary campaign funding to be competitive. App. 276a. See *Bang*, 442 F. Supp at 768. ("Under this distribution scheme, a party with state-wide plurality can unfairly disadvantage its opponents in those districts where it enjoys little district support."). App. 270a.

Second, the court found that the CEP operates as a direct subsidy to major party candidates without the countervailing burden of meaningful expenditure limits. App. 167a-168a. The undisputed evidence showed that the CEP provides most major party candidates with a financial "windfall" that is not available to minor party candidates and that cannot be characterized as a substitute for traditional fundraising because it greatly exceeds the amount of money most candidates have raised in the past. App.167a, 261a-269a. This has led most districts with CEP-participating candidates to become "awash in public financing," except in a handful of highly competitive elections. App. 261a. [10]

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[10] The limits were pegged to correspond to spending in the handful of competitive elections that are considered in play each cycle. App. 234a, 264a. Most elections are not seriously contested or not contested all. In 2006, in 72% of Senate elections and 83% of House elections, the winning major-party candidate either won by at least 20% of the vote or was

The court held that the high levels of funding that the CEP injects into state legislative races has all but eliminated the existence of "low-cost districts" where the cost of mounting a campaign was well under the CEP grant levels. App. 267a. As a result, the court found, that minor parties' face a more crowded and expensive playing field which will make it very difficult for their candidates to replicate anywhere near the same level of success from pre-CEP election cycles, and, ultimately, more difficult to qualify for public funding in the future. App. 267a, 278a. By providing major parties with the incentive and resources to contest every election, the court found that the CEP unfairly favors competition between major parties over competition from minor parties, and thereby burdens the political opportunity of minor parties. App. 276a, *see also* 261a-262a ("Pegging the CEP's grant levels to the most competitive races has burdened minor party candidates' political opportunity because, by providing major party candidates financing in amounts much higher than typical expenditure levels, it slants the political playing field in favor of major party candidates.").

After considering all the evidence, the trial court had little difficulty distinguishing the facts in this case from the facts present in *Buckley*. Not only are minor parties in Connecticut held to a minimum qualifying standard twice as high as the 5% standard upheld in *Buckley*, but the CEP disadvantages minor parties by providing transformative political

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unopposed by another major-party candidate. App. 218a-219a, These results are representative of results from recent election cycles. *Id.*

opportunities to the major parties that are unfairly denied to minor parties and which make it increasingly difficult for them to effectively run low cost campaigns. App. 267a. The district court recognized that when this Court upheld the constitutionality of the federal public financing scheme at issue in *Buckley*, it expressly noted that the federal scheme did not affect the parties' relative standing and did "not *enhance* the major parties' ability to campaign"; rather, it "substitute[d] public funding for what the parties would raise privately and additionally impose[d] an expenditure limit." App. 258a, *quoting Buckley*, 424 U.S. at 95 n.129. (emphasis added). Any disadvantage to minor party candidates in *Buckley* was "limited to the claimed denial of the enhancement of opportunity to communicate with the electorate," but even that was tempered by the scheme's expenditure ceiling for participating candidates, which the Court described as a "countervailing" disadvantage not imposed on non-participating candidates. *Id.* at 95.

By contrast, the trial court found that the CEP operates to disadvantage minor parties by conferring valuable one-sided subsidies on their opponents, without which many would not have the incentive or money to seek office and would have no greater chance of winning than minor party candidates denied the funding. App. 275a-276a. For these candidates, the court concluded, the expenditure limits do not represent a "countervailing disadvantage" because the limits greatly exceed the amount of money those candidates could have raised privately. App. 167a, 259a, 322a.

Having determined that the CEP severely burdens the political opportunity of minor party

candidates, the court applied "'exacting scrutiny', *i.e.*, strict scrutiny" and concluded that the CEP could not meet that standard. App. 292a. The court held that the CEP is not narrowly tailored to achieving the state's interests in avoiding factionalism and funding unsupported candidacies because the evidence in the record established that the qualifying contribution requirement by itself, or in combination with much lower prior vote total and petitioning thresholds, would serve these interests equally well without imposing an unconstitutional burden on minor party candidates. App. 170a, 310a-311a. In addition, the state failed to demonstrate how the public fisc is actually protected by imposing stringent qualifying criteria on minor party candidates, while permitting equally hopeless major party candidates to qualify under significantly less onerous qualifying criteria, in vastly greater numbers and at windfall funding levels. App. 170a, 300a.[11]

2. *The Court of Appeals Decision*

In a 2-1 decision, the Second Circuit affirmed the district court's ruling invalidating the excess and independent trigger provisions, but reversed the equal protection claim. App. 85a-86a. The court held that petitioners failed to establish how the qualifying criteria and the distribution formulas unfairly and

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[11] The Court further concluded that the CEP's excess expenditure and independent expenditure provisions unconstitutionally burden the plaintiffs' exercise of their First Amendment rights in a manner analogous to the law struck down by the Supreme Court in *Davis v. Federal Election Comm'n*, ___ U.S. ___, 128 S.Ct. 2759 (2008). App. 339a-348a. As noted above, these provisions were repealed after the Court of Appeals affirmed the district court's opinion striking down those provisions.

unnecessarily disadvantaged minor parties. App. 131a-142a. In reaching this conclusion, the majority did not address the minor party trigger provision. Similarly, the court failed to address the $100 contribution limit that the district court held would prevent candidates who receive partial grants from closing the spending gap against their major party opponents. The court also failed to address the argument that, unlike *Buckley*, there is no mechanism in the CEP that would allow candidates who fail to qualify for funding before the election to receive a post-election grant based on the results of the election.

Moreover, the court upheld the 10%, 15%, and 20% prior vote and petitioning standards without any consideration of how it works in tandem with the contribution requirement to limit minor party participation in the CEP. The trial court explicitly found that that the contribution requirement, by itself, will filter out weak candidates and that the additional criteria are unfairly burdensome. App.310a-311a. No other state in the nation imposes such stringent qualifying criteria, App. 525a-547a, nor did *Buckley* approve a system that requires minor-party candidates to demonstrate their level of support by collecting thousands of qualifying contributions in tandem with the prior vote total or petitioning requirements. Finally, the court never addressed the fact that major and minor party candidates are held to the same rigorous qualifying contribution requirement, but only major party candidates presumptively qualify for a full grant.

Instead, the court of appeals held that petitioners could not show how they were harmed under the CEP -- despite the trial court's

determination that it operates in a way that substantially inflates the political strength of major party candidates without providing minor party candidates a realistic opportunity to share in the program's benefits. In particular, the majority noted that fifteen minor party candidates in 2008 received more than 10% of the vote. App. 124a. The court considered that result presumptive evidence of the reasonableness of the qualification criteria, even though thirteen of the fifteen ran against only one major party candidate. App. 278a. The undisputed evidence shows that minor party candidates rarely receive more than 10% of the vote in elections contested by both major parties. App. 277a-278a. Furthermore, because the number of minor party candidates who received more than 10% of the vote increased slightly from 2006 to 2008, the court held that minor parties could not show how they were worse off under the CEP. App. 126a. Significantly, in the 2010 elections (which occurred after the court of appeals decision), not a single minor party or petitioning candidate qualified for public funding.

Once the court upheld the prior vote total requirement, the majority found it unnecessary to address the trial court's determination that the petitioning requirements were unduly burdensome. App.128a. The petitioning alternative, however, was adopted as a result of a delicate legislative balance designed to offset the fact that the vast majority of minor party candidates would be ineligible under the prior vote total standard -- including all new party and unaffiliated candidates running for the first time. *Id., see also n. 7, supra.*

Finally, the court of appeals dismissed the district court's finding that the use of a statewide

proxy to determine eligibility for funding in individual legislative districts would make it more difficult for minor parties to compete in those districts by providing historically weak major party candidates with windfall grants as speculative and inconclusive. App. 132a-137a. Purporting to hew to *Buckley*, the court concluded that petitioners could not prove with "any certainty" that they were worse off under the funding scheme simply because CEP provided valuable benefits to major party candidates. App.137a.

Judge Kearse dissented with respect to the equal protection claim. App. 161a-164a. She would have affirmed the district court's holding that use of a statewide proxy to determine eligibility for funding in legislative elections discriminates between candidates of different political parties in a manner analogous to the funding scheme at issue in *Bang v. Chase, supra*, In *Bang*, a three-judge district court held that giving public funds to local legislative candidates based on the public support of their parties statewide "invidiously discriminates between candidates of different political parties..." because "a party with state-wide plurality can unfairly disadvantage its opponents in those districts where it enjoys little district support.". 442 F. Supp. at 768. This Court summarily affirmed. *Bang v. Noreen*, 436 U.S. 941. In Judge Kearse's view, the majority's reliance on *Buckley* rather than *Bang* was "misplaced since that case involved only campaigns for the same office, the presidency; thus, only elections that were comparable provided the measure for determining whether and to what extent the various parties in *Buckley* were entitled to public funds." App162a-164a.

REASONS FOR GRANTING THE WRIT

1. The Second Circuit decision is inconsistent with *Buckley* and later cases that prohibit the use of campaign finance laws to give election related advantages to one group of preferred speakers or candidates, or to disadvantage others. Laws that disadvantage minor parties raise special concerns because of the potential to entrench the two major parties, and are considered presumptively invalid if they unfairly limit or burden their political opportunities. *Buckley* 424 U.S. at 95-96. Although the court below purported to rely on *Buckley*, that decision cannot be read as endorsing a campaign finance system that arbitrarily excludes minor parties by erecting multiple barriers to participation and which, at the same time, provides many equally weak major party candidates the transformative opportunity and resources to compete on a level playing field. While petitioners have no quarrel with the State's goal of promoting competition in a state where most elections are dominated by a single party, *Buckley* does not support a funding scheme that promotes major party competition only, and which, for all practical purposes, excludes minor parties. Not a single minor party candidate qualified for a grant in 2010.

2. The Second Circuit's failure to address the operation of the minor party trigger provision provides a separate but related basis for review of this case. Under this provision, minor party contributions that reach a threshold level trigger an additional public grant to participating major party candidates that can be twice as large as the amounts raised by the minor party. This Court's decision in *Davis v. Federal Election Comm'n*, 128 S.Ct. 2759

(2008), casts serious doubt on the constitutionality of such multiplier effects. Here, that constitutional infirmity is aggravated by a statutory scheme that, as now written, uniquely disadvantages minor party candidates who alone are subject to a trigger provision. At a minimum, the final decision in this case should be held pending a final decision in *McComish v. Bennett*, 611 F.3d 510 (9th Cir. 2010), *cert. granted*, __ S.Ct. __ (Nov. 29, 2010) (No. 10-239), which involves the application of *Davis* to the trigger provisions contained in Arizona's campaign finance law.

3. The Second Circuit's decision also conflicts with the three-judge district court decision in *Bang v. Chase*, *supra*, over whether giving public financing to local legislative candidates based on the public support of their parties statewide invidiously discriminates between candidates of different political parties. In *Bang*, the court struck down this type of funding scheme because "a party with statewide plurality can unfairly disadvantage its opponents in those districts where it enjoys little district support." 442 F. Supp. at 768. The majority here acknowledged the conflict, and that this Court summarily affirmed the decision, *Bang v. Norcen*, 436 U.S. 941, but distinguished the case in a discussion relegated to a footnote. App. 103a-104a.

4. This case raises issues of urgent national importance. Connecticut is one of a growing number of states and municipalities to adopt public financing systems for state and local elections. Almost all the other state systems, except Connecticut's are party-neutral, and the few that are not involve statewide office only and use 5% as the prior success requirement. The Second Circuit has given its

imprimatur to a public financing system that needlessly and unfairly raises the bar for minor parties even though all the available evidence shows that the qualifying criteria used in other states has not led to a proliferation of minor party candidates in those states. If the constitutional rules governing political campaign financing are now to be changed, the responsibility lies with this Court.

I. The Discriminatory Treatment of Minor Party Candidates Under Connecticut's Campaign Finance Law Is Inconsistent With *Buckley* And This Court's Campaign Finance Jurisprudence.

The Second Circuit decision is based on the flawed assumption that the treatment of minor parties in the presidential campaign finance scheme upheld in *Buckley* is constitutionally indistinguishable from Connecticut's treatment of minor parties. In fact, the CEP departs from the federal model in numerous constitutionally significant ways that "unfairly or unnecessarily burden the political opportunity" of minor parties, *see Buckley*, 424 U.S. at 95-96, and that "slants the political playing field." in favor of the major parties. App 261a-262a. By failing to recognize these differences as constitutionally significant, the decision below is inconsistent with *Buckley* and violates the First Amendment.

Under the Federal Election Campaign Act that the Court considered in *Buckley*, minor-party candidates qualified for public financing if their party received 5% percent of the vote in the prior election. 424 U.S. at 97. Connecticut has arbitrarily adopted a standard twice as high, despite the

parallel requirement that the candidate must make a preliminary showing of widespread public support by raising thousands of dollars in small dollar contributions, and even though the trial court found that the contribution requirement, by itself, would effectively filter out frivolous and hopeless minor party candidates. App. 310a-311a.

Furthermore, major party candidates who raise the necessary qualifying contributions are automatically entitled to public funding for both the primary and general elections. Minor party and petitioning candidates must satisfy the same financial threshold, but are awarded grants based on a different formula that pays them less, and then makes it almost impossible for them to close the funding gap by not allowing them to raise funds in amounts greater than $100. App. 288a. Quite apart from the fact that limits this low are presumptively suspect, *see Randall v. Sorrell*, 548 U.S. 230, 265 (2006), the Court's decision in *Buckley* cannot be read as endorsing this type of overt discrimination.

Unlike the federal system, moreover, minor party candidates in Connecticut who do not qualify for CEP funding prior to the election cannot qualify for post-election funding based on their election results. In addition, Connecticut law provides that minor party candidates who raise more than a threshold amount of money trigger an additional public grant that can be more than twice as large to the major party opponent. *See* Point II, *supra*. There is no corresponding trigger under federal law.

These provisions in Connecticut law have two principal effects. First, they make it substantially more difficult for minor party candidates to qualify

for public financing than federal law or in either of the other two states (Arizona and Maine) that now have a comprehensive public financing system. App. 312a-317a. Second, by allowing major party candidates to qualify for public financing based on prior gubernatorial vote totals, the CEP provides a windfall grant to major party candidates in legislative districts where they have never run competitively, to the further disadvantage of minor party candidates. The CEP thus does precisely what *Buckley* said FECA did not: it simultaneously burdens minor parties and tilts the playing field in favor of major party candidates.

The Court's electoral jurisprudence has recognized that state's legitimate interest in avoiding factionalism, *Buckley*, 424 U.S. at 96, and its related interest in assuring that publicly financed candidates first demonstrate a reasonable level of public support. *Id.* At the same time, this Court has also stressed that the state cannot use its electoral rules to entrench, much less enhance, the electoral position of the two major parties. A public financing system must account for the "potential fluidity of American political life," *id.* at 97 (internal quotation marks omitted), including the fact that minor party candidates do, occasionally, defeat major party opponents. Although the Court has recognized the political reality that electoral districts within the United States operate in a two-party system, it has historically rejected attempts by the legislature to solidify the Democrats and Republicans as *the* two major parties. *Williams v. Rhodes*, 393 U.S. 23, 24-25 (1968).

That is precisely what Connecticut has done here. Rather than probe the justification for these

barriers to minor party participation in the CEP, the Second Circuit discounted their significance by noting that the CEP is presumptively valid since minor party candidates have shown that they can meet the 10%, 15%, and 20% thresholds and, therefore, are at least theoretically eligible for funding, provided they can also raise the requisite qualifying contributions. The court reached this conclusion even though the evidence clearly showed that the only minor party candidates who consistently receive at least 10% of the vote are ones who run in districts abandoned by one of the major parties, including thirteen of the fifteen who hit that mark in 2008. App. 278a.[12] Minor party candidates almost never receive more than 10% of the vote in elections contested by both major parties. App.277a-278a. The majority's exclusive focus on the results in single party districts obscures the fact that the prior vote total requirement will unfairly and unnecessarily limit participation by minor party candidates as a whole -- including all independent and minor party candidates running for office for the first time. That is why the legislature provided an alternative means of participation by allowing non-

[12] There is nothing remarkable about the 2008 election results. It is strictly indicative of the number of minor party candidates who ran in single party districts and is entirely consistent with prior results. Twenty-three of the twenty-five minor party candidates received more than 10% of the vote between 2002 and 2006 competed against only one major party candidate. App. 278a. In 2010, seven of the eight minor party candidates who received more than 10% of the vote competed against only one major party candidate. These results are available on the Connecticut Secretary of State website. http://www.statementofvotesots.ct.gov/StatementOfVote/WebModules/ReportsLink/OfficeTitle.aspx.

major party candidates to qualify through a petitioning process.[13]

The CEP's discriminatory impact is even more apparent when understood in the context of the State's numerous party dominant or "safe" legislative districts. App. 217a-244a, 261a-276a. The CEP has changed the dynamics of elections in these districts by providing major party candidates who have little district wide support with the resources to compete on a level playing field. The high level of funding that the CEP injects into state legislative races gives major party candidates an unfair statutory advantage, which, in turn, exacts a heavy corresponding price on minor parties that unfairly burdens their political opportunities. See *Buckley* 424 U.S. at 95-96. Their ability to run effective, low-cost campaigns is compromised by the substantial communications benefits that flow almost exclusively to major-party candidates. App. 267a. Minor party candidates denied the CEP's benefits are inevitably worse off as a result because they must now navigate a political field that is both more competitive and expensive and that in the future will make it increasingly difficult for their candidates to replicate anywhere near the same level of success from pre-CEP election cycles, and, ultimately, more difficult to qualify for public funding in the future. App 267a, 278a.

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[13] Although the petitioning alternative remains in place, the trial court found that it imposes an equal or greater burden than the prior vote total requirement. App. 278a-287a. *See* fn. 8 and accompanying text, *supra*. The Second circuit did not disturb those findings.

The court of appeals acknowledged that a public financing law operates to burden the political opportunity of minor parties where it "disadvantage[d] non-major parties by operating to reduce their strength below that attained without any public financing" App. 106a, quoting, *Buckley*, 424 U.S. at 98-99), but then failed to properly apply that standard. The public financing system upheld in *Buckley* achieved a rough proportionality between its benefits and burdens that did not affect the "relative strengths" of the parties – it maintained the status quo. For minor party candidates, that proportionality is lacking under the CEP.

Connecticut's rules for minor party participation are not unconstitutional simply because they are unique, but their uniqueness undermines the state's assertion that they are necessary to avoid factionalism and protect the public fisc. Like Connecticut, both Arizona and Maine require all participating candidates to raise a threshold amount of small qualifying contributions to demonstrate public support before receiving public financing. But unlike Connecticut, neither Arizona nor Maine additionally requires minor party candidates to meet a prior vote standard or satisfy an onerous petitioning requirement. App. 312a-317a. [14] Under the federal system, by contrast, minor party candidates can initially qualify for public financing based on a prior vote total, but that requisite

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[14] For a more in-depth description of the Maine and Arizona clean election programs and the various constitutional challenges that have been mounted against those programs, as well as a description of the public financing programs in place in North Carolina, Minnesota, Massachusetts, Vermont, and others, *see* App. 525a-547a.

percentage is half of what Connecticut requires to participate in the CEP. And, unlike Connecticut, federal law has a safety valve that permits post-election reimbursement of campaign expenses based on election results for minor party candidates who do not qualify for pre-election funding. Finally, Connecticut alone compounds the competitive disadvantage suffered by minor party candidates through a trigger provision that can provide more than a 2:1 grant to major party candidates once a minor party candidate's contributions exceed a threshold amount. Neither Connecticut nor the Second Circuit has offered any plausible explanation why these additional burdens on political participation are necessary to avoid factionalism or protect the public fisc.

Although *Buckley* cautioned against drawing unwarranted inferences from the record about how minor parties are affected by campaign finance laws that treat minor parties differently, it does not require courts to be willfully blind to a statute's readily apparent purpose and effects. No one disputes that the CEP was adopted to encourage increased major party competition. App.224a-225a, fn. 27(summarizing legislative history). It provides historically weak candidates with the resources to run full throttle campaigns without regard to their likelihood of success or the "inhibiting factors" that have led to the abandonment or neglect of those districts in prior years. App. 276a. Giving major party candidates the resources to compete on a level playing field based solely on their affiliation with the major parties gives them an unfair advantage over other candidates in those districts where the major party candidates enjoy little district support.

While petitioners have no quarrel with the state's interest in promoting major party competition, *Buckley* does not give states the green light to devise public financing schemes that favor major party competition only or that gives the major parties an unfair advantage. *Buckley* and other Supreme Court precedents expressly forbid such a result. *See, e.g., Williams v. Rhodes*, 393 U.S. at 31(striking down Ohio ballot requirements because they "give the two old, established parties a decided advantage over any new parties struggling for existence."). There is no reason not to apply the same limiting First Amendment principle here. In the service of leveling the playing field between major party candidates, the CEP further slants the playing field in their favor. *See Buckley*, 424 U.S. at 96 n.129 ("[a]s a practical matter . . .[the presidential financing system] does not enhance the major parties' ability to campaign: it substitutes public funding for what the parties would raise privately and additionally exposes an expenditure limit."); *see also First Nat'l Bank of Boston v. Bellotti*, 435 U.S. 765, 784-85 (1978) (noting that "the First Amendment is plainly offended" when the legislature attempts to give one group "an advantage in expressing its views to the people").

II. The Minor Party Trigger Provision Upheld Below Is Inconsistent With Both *Davis* and *Buckley*

The barriers to minor party participation in Connecticut's campaign finance system are reinforced by the CEP's minor party trigger provision, which further tilts the playing field against minority party candidates and thus cannot

be reconciled with either *Buckley* or *Davis*. Under this provision, if a minor party candidate's fundraising exceeds a minimum threshold, the amount of his opponent's grant is automatically increased by almost 70%. *See* § 9-705(j)(4), App. 33a. This means that a minor party candidate running for state senate in one of the State's many single party districts will increase the size of his opponent's grant from $51,000 to $85,000 if he raises a single dollar more than $15,000. The district court held that this provision discriminates against minor parties by acting as a strong incentive to avoid raising contributions that exceed the qualifying threshold. App. 287a-289a.

In *McComish v. Bennett*, No. 10-298, this Court recently granted certiorari to review the constitutionality of Arizona's campaign finance law that provides a dollar-for-dollar match based on the expenditures of nonparticipating candidates and independent advocacy groups above the initial public financing amount. Whatever the ultimate result in that case, the minority trigger provision in Connecticut more clearly resembles the "Millionaire's Amendment" struck down in *Davis* because of its multiplier effect. In *Davis*, the contribution limit for candidates was increased threefold – from $2,300 to $6,900 – when their opponent spent more than $350,000 of personal funds on his own campaign. Here, as explained above, contributions in excess of $15,000 received by a minor party candidate for state senate will trigger a $34,000 grant to his publicly-funded, major party opponent.

Although it relied on *Davis* to strike down other provisions in the CEP that triggered additional public financing based on independent expenditures

and "excess" spending by major party candidates, which have since been repealed, the Second Circuit did not address the CEP's minor party trigger provision at all or its relationship to *Davis*.

This Court should grant certiorari to clarify that the use of punitive trigger provisions to discriminate against minor party candidates is unconstitutional under both *Buckley* and *Davis*. Alternatively, the Court should hold this petition pending a final decision in *McComish v. Bennett*.

III. The Second Circuit Decision Conflicts with the Three-Judge District Court Decision in *Bang v. Chase* Involving the Statewide Qualification Criteria

The Second Circuit's decision conflicts with the three-judge district court decision in *Bang v Chase*, *supra*, over whether giving public financing to local legislative candidates based on the statewide popularity of the party invidiously discriminates between candidates of different political parties. *Bang* involved a Minnesota statutory scheme that subsidized parties in proportion to their statewide vote totals; the funds, however, were disbursed *equally* to all candidates of a given party, regardless of their level of party support in their own district. The three-judge court found no rational basis for this scheme and deemed it unconstitutional because "a party with state-wide plurality can unfairly disadvantage its opponents in those districts where it enjoys little district support." 442 F. Supp. at 768.

The CEP operates in substantially the same way as the Minnesota financing program, except that the money is paid directly to the candidate. By awarding grants based on the candidate's major

party affiliation, the legislature ensured that major party candidate would always be presumptively eligible for funding in districts where they lack popular support. These are the districts where minor party candidates have had their greatest success and giving money to their opponents will make it more difficult to replicate that success. App. 278a

Without attempting to seriously distinguish *Bang*, the Second Circuit held that it was permissible under *Buckley* to award grants based on the candidate's major party status. The majority's reliance on that decision is misplaced because it "involved campaigns for the same office," as Judge Kearse pointed out in her dissent. The decision below is thus in direct conflict with the decision in *Bang*.

IV. This Case Raises Issues of National Significance Concerning The Treatment of Minor Parties

Connecticut is one of approximately a dozen states to enact public financing laws, and one of only three states to provide full public financing to candidates for all legislative and statewide offices. Most states have enacted programs modeled after or similar to the so-called "Clean Elections" systems that have been adopted in Maine and Arizona. *See Daggett v. Comm'n on Governmental Ethics & Election Practices*, 205 F.3d 445 (1st Cir. 2000); *McComish v. Bennett, supra.* Under these systems, all ballot qualified candidates, without regard to party affiliation, who raise a relatively modest amount of money in small dollar contributions, qualify for the same amount of funding. *See e.g., North Carolina Right to Life Committee Fund for Independent Political Expenditures v. Leake*, 524

F.3d 427 (4th Cir. 2008); *Rosenstiel v. Rodriguez*, 101 F.3d 1544 (8th Cir. 1996). These programs either provide full funding or partial funding on a matching dollar basis similar to the system for financing the presidential primary., App. 525a-547a. (summarizing different state programs). The few public financing systems that do look to a candidate's prior vote total use 5% as the relevant criterion for determining major party status and are limited to elections for statewide office. *Id.* The record shows that use of these more reasonable criteria has not led to a proliferation of minor party candidates seeking public funding or a raid on the treasury. App. 312a. The threat to the public fisc -- at least in Connecticut -- comes primarily from major party candidates because of the ease with which they can qualify for windfalls amount of money. App. 300a.

The CEP purports to be modeled on the Maine and Arizona systems, but in fact is a hybrid that radically departs from those systems and from the system upheld in *Buckley*. The Second Circuit has given its approval to a public financing system that needlessly raises the qualifying bar for minor parties, while at the same time, confers substantial election related advantages on the major parties. The court has given the green light to legislatures across the country to abandon the non-discriminatory approach to public financing that every state, except Connecticut, has opted to follow. Giving the legislature keys to the treasury to finance their own campaigns is risky business fraught with the danger that they will enact legislation that will stifle competition.

There is an urgent need for uniformity in this developing area of the law. If the constitutional rules

governing political campaign financing are now to be changed, the responsibility lies with this Court.

CONCLUSION

For the reasons stated above, the petition for a writ of certiorari should be granted. Alternatively, the petition should be held pending a final decision in *McComish v. Bennett*, No. 10-298.

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APPENDIX

CHAPTER 157
CITIZENS' ELECTION PROGRAM

Table of Contents

Sec. 9-700. Definitions.

Sec. 9-701. Citizens' Election Fund.

Sec. 9-702. Citizens' Election Program established. Eligibility for grants.

Sec. 9-703. Affidavit certifying candidate's intent to abide or not abide by expenditure limits.

Sec. 9-704. Qualifying contributions.

Sec. 9-705. Grants for primary and general election campaigns. Supplemental grants for petitioning and minor party candidates.

Sec. 9-706. Grant applications and payment.

Sec. 9-707. Limit on deposits into depository account of a qualified candidate committee.

Sec. 9-708. Payment of general election campaign grant to eligible qualified candidate committee.

Sec. 9-709. Joint campaigning by candidates for offices of Governor and Lieutenant Governor.

Sec. 9-710. Loans and personal funds for campaigns. Limits.

Sec. 9-711. Excess expenditures: Penalties.

Sec. 9-712. Excess expenditures: Reporting.

Sec. 9-713. Excess expenditures: Payment of additional moneys to opposing participating candidates.

Sec. 9-714. Independent expenditures: Payment of additional matching moneys to participating candidates.

Sec. 9-715. Voter registration lists for participating candidates.

Sec. 9-716. Annual report on status of Citizens' Election Fund. Insufficient funds. Reserve account.

Sec. 9-717. Effect of court of competent jurisdiction's prohibiting or limiting expenditure of funds from Citizens' Election Fund for grants or moneys for candidate committees.

Sec. 9-718. Organization expenditure by party committee, legislative caucus committee or legislative leadership committee for state senator or state representative. Limit for general election and primary campaign.

Secs. 9-719 to 9-749.

Sec. 9-750. Portion of revenues from tax under chapter 208 to be deposited in Citizens' Election Fund if insufficient funds available under section 3-69a.

Sec. 9-751. Contributions to Citizens' Election Fund.

Secs. 9-752 to 9-759.

PART I

PROGRAM

Sec. 9-700. Definitions. As used in sections 9-700 to 9-716, inclusive:

(1) "Commission" means the State Elections Enforcement Commission.

(2) "Depository account" means the single checking account at the depository institution designated as the depository for the candidate committee's moneys in accordance with the provisions of subsection (a) of section 9-604.

(3) "District office" has the same meaning as provided in section 9-372.

(4) "Eligible minor party candidate" means a candidate for election to an office who is nominated by a minor party pursuant to subpart

B of part III of chapter 153.

(5) "Eligible petitioning party candidate" means a candidate for election to an office pursuant to subpart C of part III of chapter 153 whose nominating petition has been approved by the Secretary of the State pursuant to section 9-453o.

(6) "Fund" means the Citizens' Election Fund established in section 9-701.

(7) "General election campaign" means (A) in the case of a candidate nominated at a primary, the period beginning on the day following the primary and ending on the date the campaign treasurer files the final statement for such campaign pursuant to section 9-608, or (B) in the case of a candidate nominated without a primary, the period beginning on the day following the day on which the candidate is nominated and ending on the date the campaign treasurer files the final statement for such campaign pursuant to section 9-608.

(8) "Major party" has the same meaning as provided in section 9-372.

(9) "Minor party" has the same meaning as provided in section 9-372.

(10) "Municipal office" has the same meaning as provided in section 9-372.

(11) "Primary campaign" means the period beginning on the day following the close of (A) a convention held pursuant to section 9-382 for the purpose of endorsing a candidate for nomination to the office of Governor, Lieutenant Governor, Attorney General, State Comptroller, State Treasurer or Secretary of the State or the district office of state senator or state representative, or (B) a caucus, convention or town committee meeting held pursuant to section 9-390 for the purpose of endorsing a candidate for the municipal office of state senator or state representative, whichever is applicable, and ending on the day of a primary held for the purpose of nominating a candidate for such office.

(12) "Qualified candidate committee" means a candidate committee (A) established to aid or promote the success of any candidate for nomination or election to the office of Governor, Lieutenant Governor, Attorney General, State Comptroller, State Treasurer, Secretary of the State, state senator or state representative, and (B) approved by the commission to receive a grant from the Citizens' Election Fund under section 9-706.

(Oct. 25 Sp. Sess. P.A. 05-5, S. 1; P.A. 06-196, S. 59.)

History: Oct. 25 Sp. Sess. P.A. 05-5 effective January 1, 2006; P.A. 06-196 made a technical change in Subdivs. (4) and (5), effective June 7, 2006.

See Sec. 9-717 re effect of court of competent jurisdiction's prohibiting or limiting the expenditure of funds from the Citizens' Election Fund established in Sec. 9-701.

Sec. 9-701. Citizens' Election Fund. There is established the "Citizens' Election Fund", which shall be a separate, nonlapsing account within the General Fund. The fund may contain any moneys required by law to be deposited in the fund. Investment earnings credited to the assets of the fund shall become part of the assets of the fund. The State Treasurer shall administer the fund. All moneys deposited in the fund shall be used for the purposes of sections 9-700 to 9-716, inclusive. The State Elections Enforcement Commission may deduct and retain from the moneys in the fund an amount equal to the costs incurred by the commission in administering the provisions of sections 9-603, 9-624, 9-675 to 9-677, inclusive, and 9-700 to 9-716, inclusive, provided such amount shall not exceed two million dollars during the fiscal year ending June 30, 2006, one million dollars during the fiscal year ending June 30, 2007, or two million three hundred thousand dollars during any fiscal year thereafter. Any portion of such allocation that exceeds the costs incurred by the commission in administering the provisions of sections 9-700 to 9-716, inclusive, during the fiscal year for which such allocation is made shall continue to be available for such administrative costs incurred by the commission in succeeding fiscal years.

(Oct. 25 Sp. Sess. P.A. 05-5, S. 2; June Sp. Sess. P.A. 07-1, S. 97.)

History: Oct. 25 Sp. Sess. P.A. 05-5 effective January 1, 2006; June Sp. Sess. P.A. 07-1 made $1,000,000 limit on administrative costs deducted by commission applicable to fiscal year ending June 30, 2007, increased limit to $2,300,000 during any fiscal year thereafter and made technical changes, effective July 1, 2007.

See Sec. 9-717 re effect of court of competent jurisdiction's prohibiting or limiting the expenditure of funds from the Citizens' Election Fund established in Sec. 9-701.

Sec. 9-702. Citizens' Election Program established. Eligibility for grants. (a) There is established a Citizens' Election Program under which (1) the candidate committee of a major party candidate for nomination to the office of state senator or state representative in 2008, or thereafter, or the office of Governor, Lieutenant Governor, Attorney General, State Comptroller, Secretary of the State or State Treasurer in 2010, or thereafter, may receive a grant from the Citizens' Election Fund for the candidate's primary campaign for said nomination, and (2) the candidate committee of a candidate nominated by a major party, or the candidate committee of an eligible minor party candidate or an eligible petitioning party candidate, for election to the office of state senator or state

representative at a special election held on or after December 31, 2006, or at a regular election held in 2008, or thereafter, or for election to the office of Governor, Attorney General, State Comptroller, Secretary of the State or State Treasurer in 2010, or thereafter, may receive a grant from the fund for the candidate's general election campaign for said office.

(b) Any such candidate committee is eligible to receive such grants for a primary campaign, if applicable, and a general election campaign if (1) the candidate certifies as a participating candidate under section 9-703, (2) the candidate's candidate committee receives the required amount of qualifying contributions under section 9-704, (3) the candidate's candidate committee returns all contributions that do not meet the criteria for qualifying contributions under section 9-704, (4) the candidate agrees to limit the campaign expenditures of the candidate's candidate committee in accordance with the provisions of subsection (c) of this section, and (5) the candidate submits an application and the commission approves the application in accordance with the provisions of section 9-706.

(c) A candidate participating in the Citizens' Election Program shall limit the expenditures of the candidate's candidate committee (A) before a primary campaign and a general election campaign, to the amount of qualifying contributions permitted in section 9-705 and any personal funds provided by the candidate under

subsection (c) of section 9-710, (B) for a primary campaign, to the sum of (i) the amount of such qualifying contributions and personal funds that have not been spent before the primary campaign, (ii) the amount of the grant for the primary campaign authorized under section 9-705, and (iii) the amount of any additional moneys for the primary campaign authorized under section 9-713 or 9-714, and (C) for a general election campaign, to the sum of (i) the amount of such qualifying contributions and personal funds that have not been spent before the general election campaign, (ii) any unexpended funds from any grant for a primary campaign authorized under section 9-705 or from any additional moneys for a primary campaign authorized under section 9-713 or 9-714, (iii) the amount of the grant for the general election campaign authorized under section 9-705, and (iv) the amount of any additional moneys for the general election campaign authorized under section 9-713 or 9-714. The candidate committee of a minor or petitioning party candidate who has received a general election campaign grant from the fund pursuant to section 9-705 shall be permitted to receive contributions in addition to the qualifying contributions subject to the limitations and restrictions applicable to participating candidates for the same office, provided such minor or petitioning party candidate shall limit the expenditures of the candidate committee for a general election campaign to the sum of the qualifying contributions and personal funds, the amount of the general election campaign grant received and

the amount raised in additional contributions that is equivalent to the difference between the amount of the applicable general election campaign grant for a major party candidate for such office and the amount of the general election campaign grant received by such minor or petitioning party candidate.

(d) For the purposes of sections 9-700 to 9-716, inclusive, if a qualified candidate committee receives a grant for a primary campaign and has qualifying contributions that have not been spent before the primary campaign, no expenditures by such committee during the primary campaign shall be deemed to have been made from such qualifying contributions until the primary campaign grant funds have been fully spent.

(e) No grants or moneys paid to a qualified candidate committee from the Citizens' Election Fund under sections 9-700 to 9-716, inclusive, shall be deemed to be public funds under any other provision of the general statutes or any public or special act unless specifically stated by such provision.

(Oct. 25 Sp. Sess. P.A. 05-5, S. 3; P.A. 06-137, S. 20.)

History: Oct. 25 Sp. Sess. P.A. 05-5 effective December 31, 2006, and applicable to elections held on or after that date; P.A. 06-137 amended Subsec. (c) to add provision re ability of minor or petitioning party candidate to receive

contributions in addition to the qualifying contributions, provided such candidate abides by the limitations and restrictions applicable to participating candidates for the same office, effective December 31, 2006, and applicable to elections held on or after that date.

See Sec. 9-717 re effect of court of competent jurisdiction's prohibiting or limiting the expenditure of funds from the Citizens' Election Fund established in Sec. 9-701.

Sec. 9-703. Affidavit certifying candidate's intent to abide or not abide by expenditure limits. (a) Each candidate for nomination or election to the office of state senator or state representative in 2008, or thereafter, or the office of Governor, Lieutenant Governor, Attorney General, State Comptroller, Secretary of the State or State Treasurer in 2010, or thereafter, shall file an affidavit with the State Elections Enforcement Commission. The affidavit shall include a written certification that the candidate either intends to abide by the expenditure limits under the Citizens' Election Program set forth in subsection (c) of section 9-702, or does not intend to abide by said limits. If the candidate intends to abide by said limits, the affidavit shall also include written certifications (1) that the campaign treasurer of the candidate committee for said candidate shall expend any moneys received from the Citizens' Election Fund in accordance with the provisions of subsection (g) of section 9-607 and regulations adopted by the

State Elections Enforcement Commission under subsection (c) of section 9-706, (2) that the candidate shall repay to the fund any such moneys that are not expended in accordance with subsection (g) of said section 9-607 and said regulations, (3) that the candidate and the campaign treasurer shall comply with the provisions of subdivision (1) of subsection (a) of section 9-711, and (4) stating the candidate's status as a major party, minor party or petitioning party candidate and, in the case of a major party or minor party candidate, the name of such party. The written certification described in subdivision (3) of this subsection shall be made by both the candidate and the campaign treasurer of the candidate committee for said candidate. A candidate for nomination or election to any such office shall file such affidavit not later than four o'clock p.m. on the twenty-fifth day before the day of a primary, if applicable, or on the fortieth day before the day of the election for such office, except that in the case of a special election for the office of state senator or state representative, the candidate shall file such affidavit not later than four o'clock p.m. on the twenty-fifth day before the day of such special election.

(b) A candidate who so certifies the candidate's intent to abide by the expenditure limits under the Citizens' Election Program set forth in subsection (c) of section 9-702 shall be referred to in sections 9-700 to 9-716, inclusive, as a "participating candidate" and a candidate who so certifies the candidate's intent to not abide by

said limits shall be referred to in sections 9-700 to 9-716, inclusive, as a "nonparticipating candidate". The commission shall prepare a list of the participating candidates and a list of the nonparticipating candidates and shall make such lists available for public inspection.

(c) A participating candidate may withdraw from participation in the Citizens' Election Program before applying for an initial grant under section 9-706, by filing an affidavit with the State Elections Enforcement Commission, which includes a written certification of such withdrawal. A candidate who files such an affidavit shall be deemed to be a nonparticipating candidate for the purposes of sections 9-700 to 9-716, inclusive, and shall not be penalized for such withdrawal. No participating candidate shall withdraw from participation in the Citizens' Election Program after applying for an initial grant under section 9-706.

(Oct. 25 Sp. Sess. P.A. 05-5, S. 4; P.A. 06-137, S. 21.)

History: Oct. 25 Sp. Sess. P.A. 05-5 effective December 31, 2006, and applicable to elections held on or after that date; P.A. 06-137 amended Subsec. (a) to add language re deadline for filing affidavit if a primary is to be held, effective December 31, 2006, and applicable to elections held on or after that date.

See Sec. 9-717 re effect of court of competent

jurisdiction's prohibiting or limiting the expenditure of funds from the Citizens' Election Fund established in Sec. 9-701.

Sec. 9-704. Qualifying contributions. (a) The amount of qualifying contributions that the candidate committee of a candidate shall be required to receive in order to be eligible for grants from the Citizens' Election Fund shall be:

(1) In the case of a candidate for nomination or election to the office of Governor, contributions from individuals in the aggregate amount of two hundred fifty thousand dollars, of which two hundred twenty-five thousand dollars or more is contributed by individuals residing in the state. The provisions of this subdivision shall be subject to the following: (A) The candidate committee shall return the portion of any contribution or contributions from any individual, including said candidate, that exceeds one hundred dollars, and such excess portion shall not be considered in calculating such amounts, and (B) all contributions received by (i) an exploratory committee established by said candidate, or (ii) an exploratory committee or candidate committee of a candidate for the office of Lieutenant Governor who is deemed to be jointly campaigning with a candidate for nomination or election to the office of Governor under subsection (a) of section 9-709, which meet the criteria for qualifying contributions to candidate committees under this section shall be considered in calculating such amounts; and

(2) In the case of a candidate for nomination or election to the office of Lieutenant Governor, Attorney General, State Comptroller, State Treasurer or Secretary of the State, contributions from individuals in the aggregate amount of seventy-five thousand dollars, of which sixty-seven thousand five hundred dollars or more is contributed by individuals residing in the state. The provisions of this subdivision shall be subject to the following: (A) The candidate committee shall return the portion of any contribution or contributions from any individual, including said candidate, that exceeds one hundred dollars, and such excess portion shall not be considered in calculating such amounts, and (B) all contributions received by an exploratory committee established by said candidate that meet the criteria for qualifying contributions to candidate committees under this section shall be considered in calculating such amounts.

(3) In the case of a candidate for nomination or election to the office of state senator for a district, contributions from individuals in the aggregate amount of fifteen thousand dollars, including contributions from at least three hundred individuals residing in municipalities included, in whole or in part, in said district. The provisions of this subdivision shall be subject to the following: (A) The candidate committee shall return the portion of any contribution or contributions from any individual, including said candidate, that exceeds one hundred dollars, and

such excess portion shall not be considered in calculating the aggregate contribution amount under this subdivision, (B) no contribution shall be counted for the purposes of the requirement under this subdivision for contributions from at least three hundred individuals residing in municipalities included, in whole or in part, in the district unless the contribution is five dollars or more, and (C) all contributions received by an exploratory committee established by said candidate that meet the criteria for qualifying contributions to candidate committees under this section shall be considered in calculating the aggregate contribution amount under this subdivision and all such exploratory committee contributions that also meet the requirement under this subdivision for contributions from at least three hundred individuals residing in municipalities included, in whole or in part, in the district shall be counted for the purposes of said requirement.

(4) In the case of a candidate for nomination or election to the office of state representative for a district, contributions from individuals in the aggregate amount of five thousand dollars, including contributions from at least one hundred fifty individuals residing in municipalities included, in whole or in part, in said district. The provisions of this subdivision shall be subject to the following: (A) The candidate committee shall return the portion of any contribution or contributions from any individual, including said candidate, that exceeds one hundred dollars, and

such excess portion shall not be considered in calculating the aggregate contribution amount under this subdivision, (B) no contribution shall be counted for the purposes of the requirement under this subdivision for contributions from at least one hundred fifty individuals residing in municipalities included, in whole or in part, in the district unless the contribution is five dollars or more, and (C) all contributions received by an exploratory committee established by said candidate that meet the criteria for qualifying contributions to candidate committees under this section shall be considered in calculating the aggregate contribution amount under this subdivision and all such exploratory committee contributions that also meet the requirement under this subdivision for contributions from at least one hundred fifty individuals residing in municipalities included, in whole or in part, in the district shall be counted for the purposes of said requirement.

(5) Notwithstanding the provisions of subdivisions (3) and (4) of this subsection, in the case of a special election for the office of state senator or state representative for a district, (A) the aggregate amount of qualifying contributions that the candidate committee of a candidate for such office shall be required to receive in order to be eligible for a grant from the Citizens' Election Fund shall be seventy-five per cent or more of the corresponding amount required under the applicable said subdivision (3) or (4), and (B) the number of contributions required from

individuals residing in municipalities included, in whole or in part, in said district shall be seventy-five per cent or more of the corresponding number required under the applicable said subdivision (3) or (4).

(b) Each individual who makes a contribution of more than fifty dollars to a candidate committee established to aid or promote the success of a participating candidate for nomination or election shall include with the contribution a certification that contains the same information described in subdivision (3) of subsection (c) of section 9-608 and shall follow the same procedure prescribed in said subsection.

(c) The following shall not be deemed to be qualifying contributions under subsection (a) of this section and shall be returned by the campaign treasurer of the candidate committee to the contributor or transmitted to the State Elections Enforcement Commission for deposit in the Citizens' Election Fund:

(1) A contribution from a communicator lobbyist or a member of the immediate family of a communicator lobbyist;

(2) A contribution from a principal of a state contractor or prospective state contractor;

(3) A contribution of less than five dollars, and a contribution of five dollars or more from an individual who does not provide the full name and

complete address of the individual; and

(4) A contribution under subdivision (1) or (2) of subsection (a) of this section from an individual who does not reside in the state, in excess of the applicable limit on contributions from out-of-state individuals in subsection (a) of this section.

(d) After a candidate committee receives the applicable aggregate amount of qualifying contributions under subsection (a) of this section, the candidate committee shall transmit any additional contributions that it receives to the State Treasurer for deposit in the Citizens' Election Fund.

(e) As used in this section, (1) "communicator lobbyist" has the same meaning as provided in section 1-91, (2) "immediate family" means the spouse or a dependent child of an individual, and (3) "principal of a state contractor or prospective state contractor" has the same meaning as provided in subsection (g) of section 9-612.

(Oct. 25 Sp. Sess. P.A. 05-5, S. 5; P.A. 08-2, S. 16.)

History: Oct. 25 Sp. Sess. P.A. 05-5 effective December 31, 2006, and applicable to elections held on or after that date; P.A. 08-2 amended Subsec. (b) to delete former provision re certification and require certification to contain same information described in Sec. 9-608(c)(3), and procedure prescribed therein to be followed,

and amended Subsec. (c) to allow for transmission of nonqualifying contributions to State Elections Enforcement Commission for deposit in Citizens' Election Fund and, in Subdiv. (3), to include contribution of less than $5, effective April 7, 2008.

See Sec. 9-717 re effect of court of competent jurisdiction's prohibiting or limiting the expenditure of funds from the Citizens' Election Fund established in Sec. 9-701.

Sec. 9-705. Grants for primary and general election campaigns. Supplemental grants for petitioning and minor party candidates. (a)(1) The qualified candidate committee of a major party candidate for the office of Governor who has a primary for nomination to said office shall be eligible to receive a grant from the Citizens' Election Fund for the primary campaign in the amount of one million two hundred fifty thousand dollars, provided, in the case of a primary held in 2014, or thereafter, said amount shall be adjusted under subsection (d) of this section.

(2) The qualified candidate committee of a candidate for the office of Governor who has been nominated, or who has qualified to appear on the election ballot in accordance with the provisions of subpart C of part III of chapter 153, shall be eligible to receive a grant from the fund for the general election campaign in the amount of three million dollars, provided in the case of an election

held in 2014, or thereafter, said amount shall be adjusted under subsection (d) of this section.

(b) (1) The qualified candidate committee of a major party candidate for the office of Lieutenant Governor, Attorney General, State Comptroller, Secretary of the State or State Treasurer who has a primary for nomination to said office shall be eligible to receive a grant from the fund for the primary campaign in the amount of three hundred seventy-five thousand dollars, provided, in the case of a primary held in 2014, or thereafter, said amount shall be adjusted under subsection (d) of this section.

(2) The qualified candidate committee of a candidate for the office of Attorney General, State Comptroller, Secretary of the State or State Treasurer who has been nominated, or who has qualified to appear on the election ballot in accordance with the provisions of subpart C of part III of chapter 153, shall be eligible to receive a grant from the fund for the general election campaign in the amount of seven hundred fifty thousand dollars, provided in the case of an election held in 2014, or thereafter, said amount shall be adjusted under subsection (d) of this section.

(c) (1) Notwithstanding the provisions of subsections (a) and (b) of this section, the qualified candidate committee of an eligible minor party candidate for the office of Governor, Lieutenant Governor, Attorney General, State

Comptroller, Secretary of the State or State Treasurer shall be eligible to receive a grant from the fund for the general election campaign if the candidate of the same minor party for the same office at the last preceding regular election received at least ten per cent of the whole number of votes cast for all candidates for said office at said election. The amount of the grant shall be one-third of the amount of the general election campaign grant under subsection (a) or (b) of this section for a candidate for the same office, provided (A) if the candidate of the same minor party for the same office at the last preceding regular election received at least fifteen per cent of the whole number of votes cast for all candidates for said office at said election, the amount of the grant shall be two-thirds of the amount of the general election campaign grant under subsection (a) or (b) of this section for a candidate for the same office, (B) if the candidate of the same minor party for the same office at the last preceding regular election received at least twenty per cent of the whole number of votes cast for all candidates for said office at said election, the amount of the grant shall be the same as the amount of the general election campaign grant under subsection (a) or (b) of this section for a candidate for the same office, and (C) in the case of an election held in 2014, or thereafter, said amounts shall be adjusted under subsection (d) of this section.

(2) Notwithstanding the provisions of subsections (a) and (b) of this section, the

qualified candidate committee of an eligible petitioning party candidate for the office of Governor, Lieutenant Governor, Attorney General, State Comptroller, Secretary of the State or State Treasurer shall be eligible to receive a grant from the fund for the general election campaign if said candidate's nominating petition has been signed by a number of qualified electors equal to at least ten per cent of the whole number of votes cast for the same office at the last preceding regular election. The amount of the grant shall be one-third of the amount of the general election campaign grant under subsection (a) or (b) of this section for a candidate for the same office, provided (A) if said candidate's nominating petition has been signed by a number of qualified electors equal to at least fifteen per cent of the whole number of votes cast for the same office at the last preceding regular election, the amount of the grant shall be two-thirds of the amount of the general election campaign grant under subsection (a) or (b) of this section for a candidate for the same office, (B) if said candidate's nominating petition has been signed by a number of qualified electors equal to at least twenty per cent of the whole number of votes cast for the same office at the last preceding regular election, the amount of the grant shall be the same as the amount of the general election campaign grant under subsection (a) or (b) of this section for a candidate for the same office, and (C) in the case of an election held in 2014, or thereafter, said amounts shall be adjusted under subsection (d) of this section.

(3) In addition to the provisions of subdivisions (1) and (2) of this subsection, the qualified candidate committee of an eligible petitioning party candidate and the qualified candidate committee of an eligible minor party candidate for the office of Governor, Lieutenant Governor, Attorney General, State Comptroller, Secretary of the State or State Treasurer shall be eligible to receive a supplemental grant from the fund after the general election if the treasurer of such candidate committee reports a deficit in the first statement filed after the general election, pursuant to section 9-608, and such candidate received a greater per cent of the whole number of votes cast for all candidates for said office at said election than the per cent of votes utilized by such candidate to obtain a general election campaign grant described in subdivision (1) or (2) of this subsection. The amount of such supplemental grant shall be calculated as follows:

(A) In the case of any such candidate who receives more than ten per cent, but not more than fifteen per cent, of the whole number of votes cast for all candidates for said office at said election, the grant shall be the product of (i) a fraction in which the numerator is the difference between the percentage of such whole number of votes received by such candidate and ten per cent and the denominator is ten, and (ii) two-thirds of the amount of the general election campaign grant under subsection (a) or (b) of this section for a major party candidate for the same office.

(B) In the case of any such candidate who receives more than fifteen per cent, but less than twenty per cent, of the whole number of votes cast for all candidates for said office at said election, the grant shall be the product of (i) a fraction in which the numerator is the difference between the percentage of such whole number of votes received by such candidate and fifteen per cent and the denominator is five, and (ii) one-third of the amount of the general election campaign grant under subsection (a) or (b) of this section for a major party candidate for the same office.

(C) The sum of the general election campaign grant received by any such candidate and a supplemental grant under this subdivision shall not exceed one hundred per cent of the amount of the general election campaign grant under subsection (a) or (b) of this section for a major party candidate for the same office.

(d) For elections held in 2014, and thereafter, the amount of the grants in subsections (a), (b) and (c) of this section shall be adjusted by the State Elections Enforcement Commission not later than January 15, 2014, and quadrennially thereafter, in accordance with any change in the consumer price index for all urban consumers as published by the United States Department of Labor, Bureau of Labor Statistics, during the period beginning on January 1, 2010, and ending on December thirty-first in the year preceding the year in which said adjustment is to be made.

(e) (1) The qualified candidate committee of a major party candidate for the office of state senator who has a primary for nomination to said office shall be eligible to receive a grant from the fund for the primary campaign in the amount of thirty-five thousand dollars, provided (A) if the percentage of the electors in the district served by said office who are enrolled in said major party exceeds the percentage of the electors in said district who are enrolled in another major party by at least twenty percentage points, the amount of said grant shall be seventy-five thousand dollars, and (B) in the case of a primary held in 2010, or thereafter, said amounts shall be adjusted under subsection (h) of this section. For the purposes of subparagraph (A) of this subdivision, the number of enrolled members of a major party and the number of electors in a district shall be determined by the latest enrollment and voter registration records in the office of the Secretary of the State submitted in accordance with the provisions of section 9-65. The names of electors on the inactive registry list compiled under section 9-35 shall not be counted for such purposes.

(2) The qualified candidate committee of a candidate for the office of state senator who has been nominated, or has qualified to appear on the election ballot in accordance with subpart C of part III of chapter 153, shall be eligible to receive a grant from the fund for the general election campaign in the amount of eighty-five thousand

dollars, provided in the case of an election held in 2010, or thereafter, said amount shall be adjusted under subsection (h) of this section.

(f) (1) The qualified candidate committee of a major party candidate for the office of state representative who has a primary for nomination to said office shall be eligible to receive a grant from the fund for the primary campaign in the amount of ten thousand dollars, provided (A) if the percentage of the electors in the district served by said office who are enrolled in said major party exceeds the percentage of the electors in said district who are enrolled in another major party by at least twenty percentage points, the amount of said grant shall be twenty-five thousand dollars, and (B) in the case of a primary held in 2010, or thereafter, said amounts shall be adjusted under subsection (h) of this section. For the purposes of subparagraph (A) of this subdivision, the number of enrolled members of a major party and the number of electors in a district shall be determined by the latest enrollment and voter registration records in the office of the Secretary of the State submitted in accordance with the provisions of section 9-65. The names of electors on the inactive registry list compiled under section 9-35 shall not be counted for such purposes.

(2) The qualified candidate committee of a candidate for the office of state representative who has been nominated, or has qualified to appear on the election ballot in accordance with

subpart C of part III of chapter 153, shall be eligible to receive a grant from the fund for the general election campaign in the amount of twenty-five thousand dollars, provided in the case of an election held in 2010, or thereafter, said amount shall be adjusted under subsection (h) of this section.

(g) (1) Notwithstanding the provisions of subsections (e) and (f) of this section, the qualified candidate committee of an eligible minor party candidate for the office of state senator or state representative shall be eligible to receive a grant from the fund for the general election campaign if the candidate of the same minor party for the same office at the last preceding regular election received at least ten per cent of the whole number of votes cast for all candidates for said office at said election. The amount of the grant shall be one-third of the amount of the general election campaign grant under subsection (e) or (f) of this section for a candidate for the same office, provided (A) if the candidate of the same minor party for the same office at the last preceding regular election received at least fifteen per cent of the whole number of votes cast for all candidates for said office at said election, the amount of the grant shall be two-thirds of the amount of the general election campaign grant under subsection (e) or (f) of this section for a candidate for the same office, (B) if the candidate of the same minor party for the same office at the last preceding regular election received at least twenty per cent of the whole number of votes cast

for all candidates for said office at said election, the amount of the grant shall be the same as the amount of the general election campaign grant under subsection (e) or (f) of this section for a candidate for the same office, and (C) in the case of an election held in 2010, or thereafter, said amounts shall be adjusted under subsection (h) of this section.

(2) Notwithstanding the provisions of subsections (e) and (f) of this section, the qualified candidate committee of an eligible petitioning party candidate for the office of state senator or state representative shall be eligible to receive a grant from the fund for the general election campaign if said candidate's nominating petition has been signed by a number of qualified electors equal to at least ten per cent of the whole number of votes cast for the same office at the last preceding regular election. The amount of the grant shall be one-third of the amount of the general election campaign grant under subsection (e) or (f) of this section for a candidate for the same office, provided (A) if said candidate's nominating petition has been signed by a number of qualified electors equal to at least fifteen per cent of the whole number of votes cast for the same office at the last preceding regular election, the amount of the grant shall be two-thirds of the amount of the general election campaign grant under subsection (e) or (f) of this section for a candidate for the same office, (B) if said candidate's nominating petition has been signed by a number of qualified electors equal to at least

twenty per cent of the whole number of votes cast for the same office at the last preceding regular election, the amount of the grant shall be the same as the amount of the general election campaign grant under subsection (e) or (f) of this section for a candidate for the same office, and (C) in the case of an election held in 2010, or thereafter, said amounts shall be adjusted under subsection (h) of this section.

(3) In addition to the provisions of subdivisions (1) and (2) of this subsection, the qualified candidate committee of an eligible petitioning party candidate and the qualified candidate committee of an eligible minor party candidate for the office of state senator or state representative shall be eligible to receive a supplemental grant from the fund after the general election if the treasurer of such candidate committee reports a deficit in the first statement filed after the general election, pursuant to section 9-608, and such candidate received a greater per cent of the whole number of votes cast for all candidates for said office at said election than the per cent of votes utilized by such candidate to obtain a general election campaign grant described in subdivision (1) or (2) of this subsection. The amount of such supplemental grant shall be calculated as follows:

(A) In the case of any such candidate who receives more than ten per cent, but less than fifteen per cent, of the whole number of votes cast for all candidates for said office at said election,

the grant shall be the product of (i) a fraction in which the numerator is the difference between the percentage of such whole number of votes received by such candidate and ten per cent and the denominator is ten, and (ii) two-thirds of the amount of the general election campaign grant under subsection (a) or (b) of this section for a major party candidate for the same office.

(B) In the case of any such candidate who receives more than fifteen per cent, but less than twenty per cent, of the whole number of votes cast for all candidates for said office at said election, the grant shall be the product of (i) a fraction in which the numerator is the difference between the percentage of such whole number of votes received by such candidate and fifteen per cent and the denominator is five, and (ii) one-third of the amount of the general election campaign grant under subsection (a) or (b) of this section for a major party candidate for the same office.

(C) The sum of the general election campaign grant received by any such candidate and a supplemental grant under this subdivision shall not exceed one hundred per cent of the amount of the general election campaign grant under subsection (a) or (b) of this section for a major party candidate for the same office.

(h) For elections held in 2010, and thereafter, the amount of the grants in subsections (e), (f) and (g) of this section shall be adjusted by the State Elections Enforcement Commission not

later than January 15, 2010, and biennially thereafter, in accordance with any change in the consumer price index for all urban consumers as published by the United States Department of Labor, Bureau of Labor Statistics, during the period beginning on January 1, 2008, and ending on December thirty-first in the year preceding the year in which said adjustment is to be made.

(i) Notwithstanding the provisions of subsections (e), (f) and (g) of this section, in the case of a special election for the office of state senator or state representative, the amount of the grant for a general election campaign shall be seventy-five per cent of the amount authorized under the applicable said subsection (e), (f) or (g).

(j) Notwithstanding the provisions of subsections (a) to (i), inclusive, of this section:

(1) The initial grant that a qualified candidate committee for a candidate is eligible to receive under subsections (a) to (i), inclusive, of this section shall be reduced by the amount of any personal funds that the candidate provides for the candidate's campaign for nomination or election pursuant to subsection (c) of section 9-710;

(2) If a participating candidate is nominated at a primary and does not expend the entire grant for the primary campaign authorized under subsection (a), (b), (e) or (f) of this section or all moneys that may be received for the primary campaign under section 9-713 or 9-714, the

amount of the grant for the general election campaign shall be reduced by the total amount of any such unexpended primary campaign grant moneys; and

(3) If a participating candidate who is nominated for election does not have any opponent in the general election campaign, the amount of the general election campaign grant for which the qualified candidate committee for said candidate shall be eligible shall be thirty per cent of the applicable amount set forth in subsections (a) to (i), inclusive; and

(4) If the only opponent or opponents of a participating candidate who is nominated for election to an office are eligible minor party candidates or eligible petitioning party candidates and no such eligible minor party candidate's or eligible petitioning party candidate's candidate committee has received a total amount of contributions of any type that is equal to or greater than the amount of the qualifying contributions that a candidate for such office is required to receive under section 9-704 to be eligible for grants from the Citizens' Election Fund, the amount of the general election campaign grant for such participating candidate shall be sixty per cent of the applicable amount set forth in this section.

(Oct. 25 Sp. Sess. P.A. 05-5, S. 6; P.A. 06-137, S. 19.)

History: Oct. 25 Sp. Sess. P.A. 05-5 effective December 31, 2006, and applicable to elections held on or after that date; P.A. 06-137 amended Subsecs. (a) to (c) and (e) to (g) to eliminate certain references to "major party", made conforming changes in Subdivs. (1) and (2) of Subsecs. (c) and (g), and added Subdiv. (3) in Subsecs. (c) and (g) re supplemental grants to eligible minor and petitioning party candidates, effective December 31, 2006, and applicable to elections held on or after that date (Revisor's note: In Subsecs. (a)(2), (b)(2), (e)(2) and (f)(2), the references to "part III C of chapter 153" were changed editorially by the Revisors to "subpart C of part III of chapter 153" to conform with P.A. 06-196).

See Sec. 9-717 re effect of court of competent jurisdiction's prohibiting or limiting the expenditure of funds from the Citizens' Election Fund established in Sec. 9-701.

Sec. 9-706. Grant applications and payment. (a)(1) A participating candidate for nomination to the office of state senator or state representative in 2008, or thereafter, or the office of Governor, Lieutenant Governor, Attorney General, State Comptroller, Secretary of the State or State Treasurer in 2010, or thereafter, may apply to the State Elections Enforcement Commission for a grant from the fund under the Citizens' Election Program for a primary campaign, after the close of the state convention of the candidate's party that is called for the

purpose of choosing candidates for nomination for the office that the candidate is seeking, if a primary is required under chapter 153, and (A) said party endorses the candidate for the office that the candidate is seeking, (B) the candidate is seeking nomination to the office of Governor, Lieutenant Governor, Attorney General, State Comptroller, State Treasurer or Secretary of the State or the district office of state senator or state representative and receives at least fifteen per cent of the votes of the convention delegates present and voting on any roll-call vote taken on the endorsement or proposed endorsement of a candidate for the office the candidate is seeking, or (C) the candidate circulates a petition and obtains the required number of signatures for filing a candidacy for nomination for (i) the office of Governor, Lieutenant Governor, Attorney General, State Comptroller, State Treasurer or Secretary of the State or the district office of state senator or state representative, pursuant to section 9-400, or (ii) the municipal office of state senator or state representative, pursuant to section 9-406, whichever is applicable. The State Elections Enforcement Commission shall make any such grants to participating candidates in accordance with the provisions of subsections (d) to (g), inclusive, of this section.

(2) A participating candidate for nomination to the office of state senator or state representative in 2008, or thereafter, or the office of Governor, Attorney General, State Comptroller, Secretary of the State or State Treasurer in 2010,

or thereafter, may apply to the State Elections Enforcement Commission for a grant from the fund under the Citizens' Election Program for a general election campaign:

(A) After the close of the state or district convention or municipal caucus, convention or town committee meeting, whichever is applicable, of the candidate's party that is called for the purpose of choosing candidates for nomination for the office that the candidate is seeking, if (i) said party endorses said candidate for the office that the candidate is seeking and no other candidate of said party files a candidacy with the Secretary of the State in accordance with the provisions of section 9-400 or 9-406, whichever is applicable, (ii) the candidate is seeking election to the office of Governor, Lieutenant Governor, Attorney General, State Comptroller, State Treasurer or Secretary of the State or the district office of state senator or state representative and receives at least fifteen per cent of the votes of the convention delegates present and voting on any roll-call vote taken on the endorsement or proposed endorsement of a candidate for the office the candidate is seeking, no other candidate for said office at such convention either receives the party endorsement or said percentage of said votes for said endorsement or files a certificate of endorsement with the Secretary of the State in accordance with the provisions of section 9-388 or a candidacy with the Secretary of the State in accordance with the provisions of section 9-400, and no other candidate for said office circulates a

petition and obtains the required number of signatures for filing a candidacy for nomination for said office pursuant to section 9-400, (iii) the candidate is seeking election to the office of Governor, Lieutenant Governor, Attorney General, State Comptroller, State Treasurer or Secretary of the State or the district office of state senator or state representative, circulates a petition and obtains the required number of signatures for filing a candidacy for nomination for said office pursuant to section 9-400 and no other candidate for said office at the state or district convention either receives the party endorsement or said percentage of said votes for said endorsement or files a certificate of endorsement with the Secretary of the State in accordance with the provisions of section 9-388 or a candidacy with the Secretary of the State in accordance with the provisions of section 9-400, or (iv) the candidate is seeking election to the municipal office of state senator or state representative, circulates a petition and obtains the required number of signatures for filing a candidacy for nomination for the office the candidate is seeking pursuant to section 9-406 and no other candidate for said office at the caucus, convention or town committee meeting either receives the party endorsement or files a certification of endorsement with the town clerk in accordance with the provisions of section 9-391;

(B) After any primary held by such party for nomination for said office, if the Secretary of the State declares that the candidate is the party

nominee in accordance with the provisions of section 9-440;

(C) In the case of a minor party candidate, after the nomination of such candidate is certified and filed with the Secretary of the State pursuant to section 9-452; or

(D) In the case of a petitioning party candidate, after approval by the Secretary of the State of such candidate's nominating petition pursuant to section 9-453o.

(3) A participating candidate for nomination to the office of state senator or state representative at a special election in 2008, or thereafter, may apply to the State Elections Enforcement Commission for a grant from the fund under the Citizens' Election Program for a general election campaign after the close of the district convention or municipal caucus, convention or town committee meeting of the candidate's party that is called for the purpose of choosing candidates for nomination for the office that the candidate is seeking.

(4) Notwithstanding the provisions of subdivisions (1) and (2) of this subsection, no participating candidate for nomination or election who changes the candidate's status as a major party, minor party or petitioning party candidate or becomes a candidate of a different party, after filing the affidavit required under section 9-703, shall be eligible to apply for a grant under the

Citizens' Election Program for such candidate's primary campaign for such nomination or general election campaign for such election. The provisions of this subdivision shall not apply in the case of a candidate who is nominated by more than one party and does not otherwise change the candidate's status as a major party, minor party or petitioning party candidate.

(b) The application shall include a written certification that:

(1) The candidate committee has received the required amount of qualifying contributions;

(2) The candidate committee has repaid all moneys borrowed on behalf of the campaign, as required by subsection (b) of section 9-710;

(3) The candidate committee has returned any contribution of five dollars or more from an individual who does not include the individual's name and address with the contribution;

(4) The candidate committee has returned all contributions or portions of contributions that do not meet the criteria for qualifying contributions under section 9-704 and transmitted all excess qualifying contributions to the Citizens' Election Fund;

(5) The campaign treasurer of the candidate committee will: (A) Comply with the provisions of chapters 155 and 157, and (B) maintain and

furnish all records required pursuant to chapters 155 and 157 and any regulation adopted pursuant to such chapters;

(6) All moneys received from the Citizens' Election Fund will be deposited upon receipt into the depository account of the candidate committee;

(7) The campaign treasurer of the candidate committee will expend all moneys received from the fund in accordance with the provisions of subsection (g) of section 9-607 and regulations adopted by the State Elections Enforcement Commission under subsection (e) of this section; and

(8) If the candidate withdraws from the campaign, becomes ineligible or dies during the campaign, the candidate committee of the candidate will return to the commission, for deposit in the fund, all moneys received from the fund pursuant to sections 9-700 to 9-716, inclusive, which said candidate committee has not spent as of the date of such occurrence.

(c) The application shall be accompanied by a cumulative itemized accounting of all funds received, expenditures made and expenses incurred but not yet paid by the candidate committee as of three days before the applicable application deadline contained in subsection (g) of this section. Such accounting shall be sworn to under penalty of false statement by the campaign

treasurer of the candidate committee. The commission shall prescribe the form of the application and the cumulative itemized accounting. The form for such accounting shall conform to the requirements of section 9-608. Both the candidate and the campaign treasurer of the candidate committee shall sign the application.

(d) In accordance with the provisions of subsection (g) of this section, the commission shall review the application, determine whether (1) the candidate committee for the applicant has received the required qualifying contributions, (2) in the case of an application for a grant from the fund for a primary campaign, the applicant has met the applicable condition under subsection (a) of this section for applying for such grant and complied with the provisions of subsections (b) and (c) of this section, (3) in the case of an application for a grant from the fund for a general election campaign, the applicant has met the applicable condition under subsection (a) of this section for applying for such moneys and complied with the provisions of subsections (b) and (c) of this section, and (4) in the case of an application by a minor party or petitioning party candidate for a grant from the fund for a general election campaign, the applicant qualifies as an eligible minor party candidate or an eligible petitioning party candidate, whichever is applicable. If the commission approves an application, the commission shall determine the amount of the grant payable to the candidate committee for the

applicant pursuant to section 9-705 from the fund, and notify the State Comptroller and the candidate of such candidate committee, of such amount. If the timing of the commission's approval of the grant in relation to the Secretary of the State's determination of ballot status is such that the commission cannot determine whether the qualified candidate committee is entitled to the applicable full initial grant for the primary or election or the applicable partial grant for the primary or election, as the case may be, the commission shall approve the lesser applicable partial initial grant. The commission shall then authorize the payment of the remaining portion of the applicable grant after the commission has knowledge of the circumstances regarding the ballot status of the opposing candidates in such primary or election. Not later than two business days following notification by the commission, the State Comptroller shall draw an order on the State Treasurer for payment of any such approved amount to the qualified candidate committee from the fund.

(e) The State Elections Enforcement Commission shall adopt regulations, in accordance with the provisions of chapter 54, on permissible expenditures under subsection (g) of section 9-607 for qualified candidate committees receiving grants from the fund under sections 9-700 to 9-716, inclusive.

(f) If a nominated participating candidate dies,

withdraws the candidate's candidacy or becomes disqualified to hold the office for which the candidate has been nominated after the commission approves the candidate's application for a grant under this section, the candidate committee of the candidate who is nominated to replace said candidate pursuant to section 9-460 shall be eligible to receive grants from the fund without complying with the provisions of section 9-704, if said replacement candidate files an affidavit under section 9-703 certifying the candidate's intent to abide by the expenditure limits set forth in subsection (c) of section 9-702 and notifies the commission on a form prescribed by the commission.

(g) (1) Any application submitted pursuant to this section for a primary or general election shall be submitted in accordance with the following schedule: (A) By five o'clock p.m. on the third Thursday in May of the year that the primary or election will be held at which such participating candidate will seek nomination or election, or (B) by five o'clock p.m. on any subsequent Thursday of such year, provided no application shall be accepted by the commission after five o'clock p.m. on or after the fourth to last Friday prior to the primary or election at which such participating candidate will seek nomination or election. Not later than four business days following any such Thursday or Friday, as applicable, or, in the event of a national, regional or local emergency or local natural disaster, as soon thereafter as is practicable, the commission shall review any

application received by such Thursday or Friday, in accordance with the provisions of subsection (d) of this section, and determine whether such application shall be approved or disapproved. For any such application that is approved, any disbursement of funds shall be made not later than twelve business days prior to any such primary or general election. From the third week of June in even-numbered years until the third week in July, the commission shall meet twice weekly to determine whether or not to approve applications for grants if there are pending grant applications.

(2) Notwithstanding the provisions of subdivision (1) of this subsection, no application for a special election shall be accepted by the commission after five o'clock p.m. on or after ten business days prior to the special election at which such participating candidate will seek election. Not later than three business days following such deadline, or, in the event of a national, regional or local emergency or local natural disaster, as soon thereafter as practicable, the commission shall review any such application received by such deadline, in accordance with the provisions of subsection (d) of this section, and determine whether such application shall be approved or disapproved. For any such application that is approved, any disbursement of funds shall be made not later than seven business days prior to any such special election.

(3) The commission shall publish such application review schedules and meeting schedules on the commission's web site and with the Secretary of the State.

(Oct. 25 Sp. Sess. P.A. 05-5, S. 7; P.A. 06-137, S. 22; P.A. 08-2, S. 17.)

History: Oct. 25 Sp. Sess. P.A. 05-5 effective December 31, 2006, and applicable to elections held on or after that date; P.A. 06-137 amended Subsec. (d)(2) to eliminate requirement that at least one other participating candidate for nomination in the primary, from the same party and for the same office as the applicant, has also received the required qualifying contributions or at least one nonparticipating candidate for nomination in the primary, from the same party and for the same office as the applicant, has received an amount of contributions equal to the amount of such qualifying contributions, effective December 31, 2006, and applicable to elections held on or after that date; P.A. 08-2 amended Subsec. (a)(1) to include provision re State Elections Enforcement Commission making grants in accordance with Subsecs. (d) to (g), amended Subsec. (b)(5) to require compliance with and maintenance of records pursuant to chapters 155 and 157, amended Subsec. (c) to provide that accounting is as of 3 days before the applicable deadline in Subsec. (g), amended Subsec. (d) to change deadline for review of applications by commission from not later than 3 business days after receipt to the applicable

deadline in Subsec. (g) and add provisions re timing of commission's approval of grant in relation to Secretary of the State's determination of ballot status and added Subsec. (g) re schedule for submission of applications, effective April 7, 2008.

See Sec. 9-717 re effect of court of competent jurisdiction's prohibiting or limiting the expenditure of funds from the Citizens' Election Fund established in Sec. 9-701.

Sec. 9-707. Limit on deposits into depository account of a qualified candidate committee. Following the initial deposit of moneys from the Citizens' Election Fund into the depository account of a qualified candidate committee, no contribution, loan, amount of the candidate's own moneys or any other moneys received by the candidate or the campaign treasurer on behalf of the committee shall be deposited into said depository account, except (1) grants from the fund, and (2) any additional moneys from the fund as provided in sections 9-713 and 9-714.

(Oct. 25 Sp. Sess. P.A. 05-5, S. 8.)

History: Oct. 25 Sp. Sess. P.A. 05-5 effective December 31, 2006, and applicable to elections held on or after that date.

See Sec. 9-717 re effect of court of competent jurisdiction's prohibiting or limiting the

expenditure of funds from the Citizens' Election Fund established in Sec. 9-701.

Sec. 9-708. Payment of general election campaign grant to eligible qualified candidate committee. A qualified candidate committee that received moneys from the Citizens' Election Fund for a primary campaign and whose candidate is the party nominee shall receive a grant from the fund for a general election campaign. Upon receiving verification from the Secretary of the State of the declaration by the Secretary of the State in accordance with the provisions of section 9-440 of the results of the votes cast at the primary, the State Elections Enforcement Commission shall notify the State Comptroller of the amount payable to such qualified candidate committee pursuant to section 9-705. Not later than two business days following notification by the commission, the State Comptroller shall draw an order on the State Treasurer for payment of the general election campaign grant to said committee from said fund.

(Oct. 25 Sp. Sess. P.A. 05-5, S. 9.)

History: Oct. 25 Sp. Sess. P.A. 05-5 effective December 31, 2006, and applicable to elections held on or after that date.

See Sec. 9-717 re effect of court of competent jurisdiction's prohibiting or limiting the expenditure of funds from the Citizens' Election Fund established in Sec. 9-701.

Sec. 9-709. Joint campaigning by candidates for offices of Governor and Lieutenant Governor. (a) For purposes of this section, expenditures made to aid or promote the success of both a candidate for nomination or election to the office of Governor and a candidate for nomination or election to the office of Lieutenant Governor jointly, shall be considered expenditures made to aid or promote the success of a candidate for nomination or election to the office of Governor. The party-endorsed candidate for nomination or election to the office of Lieutenant Governor and the party-endorsed candidate for nomination or election to the office of Governor shall be deemed to be aiding or promoting the success of both candidates jointly upon the earliest of the following: (1) The primary, whether held for the office of Governor, the office of Lieutenant Governor, or both; (2) if no primary is held for the office of Governor or Lieutenant Governor, the fourteenth day following the close of the convention; or (3) a declaration by the party-endorsed candidates that they will campaign jointly. Any other candidate for nomination or election to the office of Lieutenant Governor shall be deemed to be aiding or promoting the success of such candidacy for the office of Lieutenant Governor and the success of a candidate for nomination or election to the office of Governor jointly upon a declaration by the candidates that they shall campaign jointly.

(b) If a candidate for nomination or election to the office of Lieutenant Governor is campaigning

jointly with a candidate for nomination or election to the office of Governor, the candidate committee and any exploratory committee for the candidate for the office of Lieutenant Governor shall be dissolved as of the applicable date set forth in subsection (a) of this section. Not later than fifteen days after said date, the campaign treasurer of the candidate committee formed to aid or promote the success of said candidate for nomination or election to the office of Lieutenant Governor shall file a statement with the proper authority under section 9-603, identifying all contributions received or expenditures made by the committee since the previous statement and the balance on hand or deficit, as the case may be. Not later than thirty days after the applicable date set forth in subsection (a) of this section, (1) the campaign treasurer of a qualified candidate committee formed to aid or promote the success of said candidate for nomination or election to the office of Lieutenant Governor shall distribute any surplus to the fund, and (2) the campaign treasurer of a nonqualified candidate committee formed to aid or promote the success of said candidate for nomination or election to the office of Lieutenant Governor shall distribute such surplus in accordance with the provisions of subsection (e) of section 9-608.

(Oct. 25 Sp. Sess. P.A. 05-5, S. 10.)

History: Oct. 25 Sp. Sess. P.A. 05-5 effective December 31, 2006, and applicable to elections held on or after that date.

See Sec. 9-717 re effect of court of competent jurisdiction's prohibiting or limiting the expenditure of funds from the Citizens' Election Fund established in Sec. 9-701.

Sec. 9-710. Loans and personal funds for campaigns. Limits. (a) The candidate committee for a candidate who intends to participate in the Citizens' Election Program may borrow moneys on behalf of a campaign for a primary or a general election from one or more financial institutions, as defined in section 36a-41, in an aggregate amount not to exceed one thousand dollars. The amount borrowed shall not constitute a qualifying contribution under section 9-704. No individual, political committee or party committee, except the candidate or, in a general election, the state central committee of a political party, shall endorse or guarantee such a loan in an aggregate amount in excess of five hundred dollars. An endorsement or guarantee of such a loan shall constitute a contribution by such individual or committee for as long as the loan is outstanding. The amount endorsed or guaranteed by such individual or committee shall cease to constitute a contribution upon repayment of the amount endorsed or guaranteed.

(b) All such loans shall be repaid in full prior to the date such candidate committee applies for a grant from the Citizens' Election Fund pursuant to section 9-706. A candidate who fails to repay such loans or fails to certify such repayment to

the State Elections Enforcement Commission shall not be eligible to receive and shall not receive grants from the fund.

(c) A candidate who intends to participate in the Citizens' Election Program may provide personal funds for such candidate's campaign for nomination or election in an amount not exceeding: (1) For a candidate for the office of Governor, twenty thousand dollars; (2) for a candidate for the office of Lieutenant Governor, Attorney General, State Comptroller, State Treasurer or Secretary of the State, ten thousand dollars; (3) for a candidate for the office of state senator, two thousand dollars; or (4) for a candidate for the office of state representative, one thousand dollars. Such personal funds shall not constitute a qualifying contribution under section 9-704.

(Oct. 25 Sp. Sess. P.A. 05-5, S. 11; P.A. 06-196, S. 60.)

History: Oct. 25 Sp. Sess. P.A. 05-5 effective December 31, 2006, and applicable to elections held on or after that date; P.A. 06-196 made a technical change in Subsecs. (a) and (c)(2), effective December 31, 2006, and applicable to elections held on or after that date.

See Sec. 9-717 re effect of court of competent jurisdiction's prohibiting or limiting the expenditure of funds from the Citizens' Election Fund established in Sec. 9-701.

Sec. 9-711. Excess expenditures: Penalties. (a) If an expenditure in excess of the applicable expenditure limit set forth in subsection (c) of section 9-702 is made or incurred by a qualified candidate committee that receives a grant from the Citizens' Election Fund pursuant to section 9-706, (1) the candidate and campaign treasurer of said committee shall be jointly and severally liable for paying for the excess expenditure, (2) the committee shall not receive any additional grants or moneys from the fund for the remainder of the election cycle if the State Elections Enforcement Commission determines that the candidate or campaign treasurer of said committee had knowledge of the excess expenditure, (3) the campaign treasurer shall be subject to penalties under section 9-7b, and (4) the candidate of said candidate committee shall be deemed to be a nonparticipating candidate for the purposes of sections 9-700 to 9-716, inclusive, if the commission determines that the candidate or campaign treasurer of said committee had knowledge of the excess expenditure. The commission may waive the provisions of this subsection upon determining that an excess expenditure is de minimis. The commission shall adopt regulations, in accordance with the provisions of chapter 54, establishing standards for making such determinations. Such standards shall include, but not be limited to, a finding by the commission that the candidate or campaign treasurer has, from the candidate's or campaign treasurer's personal funds, either paid the excess expenditure or reimbursed the qualified

candidate committee for its payment of the excess expenditure.

(b) If an individual, who is associated with the campaign of a candidate whose qualified candidate committee has received a grant from the Citizens' Election Fund pursuant to section 9-706, makes or incurs an expenditure in excess of the applicable expenditure limit set forth in subsection (c) of section 9-702 for said committee, without the consent of the candidate or campaign treasurer of the committee, the individual shall (1) repay to the fund the amount of such excess expenditure, and (2) shall be subject to penalties under section 9-7b. The provisions of this subsection shall not apply to an individual who is the candidate or the campaign treasurer of such committee.

(Oct. 25 Sp. Sess. P.A. 05-5, S. 12; P.A. 06-196, S. 61.)

History: Oct. 25 Sp. Sess. P.A. 05-5 effective December 31, 2006, and applicable to elections held on or after that date; P.A. 06-196 made a technical change in Subsec. (a), effective December 31, 2006, and applicable to elections held on or after that date.

See Sec. 9-717 re effect of court of competent jurisdiction's prohibiting or limiting the expenditure of funds from the Citizens' Election Fund established in Sec. 9-701.

Sec. 9-712. Excess expenditures: Reporting. (a)(1) If a candidate committee in a primary campaign or a general election campaign in which there is at least one participating candidate initially receives contributions, loans or other funds or makes or incurs an obligation to make, an expenditure that, in the aggregate, exceeds ninety per cent of the applicable expenditure limit for the applicable primary or general election period, the campaign treasurer of the candidate committee receiving such contributions, loans or other funds or making or incurring the obligation to make the excess expenditure shall file a supplemental campaign finance statement with the State Elections Enforcement Commission in accordance with the provisions of subdivision (2) of this subsection.

(2) If a candidate committee receives contributions, loans or other funds, or makes or incurs an obligation to make an expenditure that, in the aggregate, exceeds ninety per cent of the applicable expenditure limit for the applicable primary or general election campaign period more than twenty days before the day of such primary or election, the campaign treasurer of said candidate shall file an initial supplemental campaign finance disclosure statement with the commission not later than forty-eight hours after receiving such contributions, loans or other funds, or making or incurring such expenditure. If said candidate committee receives contributions, loans or other funds, or makes or incurs an obligation to make expenditures, that, in the aggregate, exceed

ninety per cent of the applicable expenditure limit for the applicable primary or general election campaign period twenty days or less before the day of such primary or election, the campaign treasurer of such candidate shall file such statement with the commission not later than twenty-four hours after receiving such contributions, loans or funds, or making or incurring such expenditure.

(3) After the initial filing of a statement under subdivisions (1) and (2) of this subsection, the campaign treasurer of the candidate filing the statement and the campaign treasurer of all of the opposing candidates shall file periodic supplemental campaign finance statements with the commission on the following schedule: (A) If the date of the applicable primary or general election is more than five weeks after the date the initial supplemental campaign finance disclosure statement is due to be filed in accordance with subdivisions (1) and (2) of this subsection, periodic supplemental campaign finance statements shall be filed bi-weekly on every other Thursday, beginning the second Thursday after the initial statement is filed; and (B) if the date of the applicable primary election or general election is five weeks or less away, periodic supplemental campaign finance statements shall be filed: (i) In the case of a primary campaign, on the first Thursday following the date in July on which candidates are required to file campaign finance statements pursuant to subsection (a) of section 9-608, or the first Thursday following the

supplemental campaign finance statement filed under subdivisions (1) and (2) of this subsection, whichever is later, and each Thursday thereafter until the Thursday before the day of the primary, inclusive, and (ii) in the case of a general election campaign, on the first Thursday following the date in October on which candidates are required to file campaign finance statements pursuant to subsection (a) of section 9-608, or the first Thursday following the supplemental campaign finance statement filed under subdivision (1) of this subsection, whichever is later, and each Thursday thereafter until the Thursday after the day of the election, inclusive.

(4) Notwithstanding the provisions of subdivisions (1), (2) and (3) of this subsection, if a candidate committee in a primary campaign or a general election campaign in which there is at least one participating candidate receives contributions, loans or other funds, or makes or incurs an obligation to make expenditures that, in the aggregate, exceed one hundred per cent, one hundred twenty-five per cent, one hundred fifty per cent, or one hundred seventy-five per cent of the applicable expenditure limit for the applicable primary or general election campaign period, the campaign treasurer of the candidate committee receiving the contributions, incurring the loans or raising the funds, or making or incurring the obligation to make the excess expenditure or expenditures shall file a declaration of excess receipts or expenditures statement with the commission, within the deadlines set forth in

subdivision (2) of this subsection.

(5) Each supplemental statement required under subdivision (1), (2), (3) or (4) of this subsection for a candidate shall disclose the name of the candidate, the name of the candidate's campaign committee and the total amount of campaign contributions, loans or other funds received, or expenditures made or obligated to be made by such candidate committee during the primary campaign or the general election campaign, whichever is applicable, as of the day before the date on which such statement is required to be filed. The commission shall adopt regulations, in accordance with the provisions of chapter 54, specifying permissible media for the transmission of such statements to the commission, which shall include electronic mail.

(b) (1) As used in this section and section 9-713, "excess expenditure" means an expenditure made, or obligated to be made, by a nonparticipating or a participating candidate who is opposed by one or more other participating candidates in a primary campaign or a general election campaign, which is in excess of the amount of the applicable limit on expenditures for said participating candidates for said campaign and which is the sum of (A) the applicable qualifying contributions that the participating candidate is required to receive under section 9-704 to be eligible for grants from the Citizens' Election Fund, and (B) one hundred per cent of the applicable full grant amount for a major party

candidate authorized under section 9-705 for the applicable campaign period.

(2) The commission shall confirm whether an expenditure described in a declaration filed under this subsection is an excess expenditure.

(c) If a campaign treasurer fails to file any statement or declaration required by this section within the time required, said campaign treasurer shall be subject to a civil penalty, imposed by the commission, of not more than one thousand dollars for the first failure to file the statement within the time required and not more than five thousand dollars for any subsequent such failure.

(Oct. 25 Sp. Sess. P.A. 05-5, S. 13; P.A. 06-137, S. 23; P.A. 08-2, S. 18.)

History: Oct. 25 Sp. Sess. P.A. 05-5 effective December 31, 2006, and applicable to elections held on or after that date; P.A. 06-137 added references to "candidate committee" and "campaign treasurer" and made technical changes in Subsecs. (a) and (b) and redefined "excess expenditure" in Subsec. (b)(1), effective December 31, 2006, and applicable to elections held on or after that date; P.A. 08-2 amended Subsec. (a) to rewrite provisions of Subdiv. (1) and include therein receipt of contributions, loans or other funds, add new Subdiv. (2) re obligation to make expenditure that, in the aggregate, exceeds 90% of applicable expenditure limit more than 20 days before day of primary or election, redesignate

existing Subdiv. (2) as new Subdiv. (3) and amend same to include provision re applicable primary or election more than 5 weeks after date that initial supplemental campaign finance disclosure statement is due and to make conforming changes, add Subdiv. (4) re expenditures that exceed 100%, 125%, 150% or 175% of applicable expenditure limit, redesignate existing Subdiv. (3) as Subdiv. (5) and make conforming changes therein, and amended Subsec. (b) to redefine "excess expenditure" for purposes of section and Sec. 9-713 in Subdiv. (1), delete former Subdiv. (2) re declaration of excess expenditures and redesignate existing Subdiv. (3) as new Subdiv. (2), effective April 7, 2008.

See Sec. 9-717 re effect of court of competent jurisdiction's prohibiting or limiting the expenditure of funds from the Citizens' Election Fund established in Sec. 9-701.

Sec. 9-713. Excess expenditures: Payment of additional moneys to opposing participating candidates. (a) If the State Elections Enforcement Commission determines that contributions, loans or other funds have been received, or that an expenditure is made, or obligated to be made, by a nonparticipating candidate who is opposed by one or more participating candidates in a primary campaign or a general election campaign, which in the aggregate exceed one hundred per cent of the applicable expenditure limit for the applicable primary or general election campaign period, as

defined in subdivision (1) of subsection (b) of section 9-712, the commission shall process a voucher not later than two business days after the commission's determination and the State Comptroller shall draw an order on the State Treasurer for payment, by electronic fund transfer directly into the campaign account of each such participating candidate, not later than three business days after receipt of an authorized voucher from the commission. The commission's determination may be made either on its own initiative to review the contributions, loans or other funds received or expenditures made, or obligated to be made of the nonparticipating candidate or upon request for review by any said participating candidate. Supplemental grant money under this subsection shall only be transmitted to the candidate committee of each such participating candidate who has not made an expenditure in excess of the sum of (1) the amount of the applicable qualifying contributions that the participating candidate is required to receive under section 9-704 to be eligible for grants from the Citizens' Election Fund, and (2) one hundred per cent of the applicable primary or general election grant. The amount of such additional moneys for each such participating candidate shall be twenty-five per cent of the applicable primary or general election grant. Upon the commission's determination that a participating candidate is entitled to any such additional moneys, the candidate committee may incur the obligation to make such additional expenditures not greater than the amount

approved as a supplemental grant received under this subsection. No participating candidate shall receive more than one payment of moneys under this subsection for any campaign.

(b) If the State Elections Enforcement Commission determines that contributions, loans or other funds have been received, or that an expenditure is made, or obligated to be made, by a nonparticipating candidate who is opposed by one or more participating candidates in a primary campaign or a general election campaign, which in the aggregate exceeds one hundred twenty-five per cent of the applicable expenditure limit for the applicable primary or general election campaign period, as defined in subdivision (1) of subsection (b) of section 9-712, the commission shall process a voucher not later than two business days after its determination and the State Comptroller shall draw an order on the State Treasurer for payment, by electronic fund transfer directly into the campaign account of each such participating candidate, not later than three business days after receipt of an authorized voucher from the commission. The commission's determination may be made either on its own initiative to review the contributions, loans or other funds received, or expenditures made or obligated to be made of the nonparticipating candidate or upon request for review by any said participating candidate. Supplemental grant money under this subsection shall only be transmitted to the candidate committee of each such participating candidate who has not made

an expenditure in excess of the sum of (1) the amount of the applicable qualifying contributions that the participating candidate is required to receive under section 9-704 to be eligible for grants from the Citizens' Election Fund, and (2) one hundred per cent of the applicable primary or general election grant. The amount of such additional moneys for each such participating candidate shall be twenty-five per cent of the applicable primary or general election grant. Upon the commission's determination that a participating candidate is entitled to any such additional moneys, the candidate committee may incur the obligation to make such additional expenditures not greater than the amount approved as a supplemental grant received under this subsection. No participating candidate shall receive more than one payment of moneys under this subsection for any campaign.

(c) If the State Elections Enforcement Commission determines that contributions, loans or other funds have been received, or that an expenditure is made, or obligated to be made, by a nonparticipating candidate who is opposed by one or more participating candidates in a primary campaign or a general election campaign, which in the aggregate exceeds one hundred fifty per cent of the applicable expenditure limit for the applicable primary or general election campaign period, as defined in subdivision (1) of subsection (b) of section 9-712, the commission shall process a voucher not later than two business days after its determination and the State Comptroller shall

draw an order on the State Treasurer for payment, by electronic fund transfer directly into the campaign account of each such participating candidate, not later than three business days after receipt of an authorized voucher from the commission. The commission's determination may be made either on its own initiative to review the contributions, loans or other funds received, or expenditures made or obligated to be made of the nonparticipating candidate or upon request for review by any said participating candidate. Supplemental grant money under this subsection shall only be transmitted to the candidate committee of each such participating candidate who has not made an expenditure in excess of the sum of (1) the amount of the applicable qualifying contributions that the participating candidate is required to receive under section 9-704 to be eligible for grants from the Citizens' Election Fund, and (2) one hundred per cent of the applicable primary or general election grant. The amount of such additional moneys for each such participating candidate shall be twenty-five per cent of the applicable primary or general election grant. Upon the commission's determination that a participating candidate is entitled to any such additional moneys, the candidate committee may incur the obligation to make such additional expenditures not greater than the amount approved as a supplemental grant received under this subsection. No participating candidate shall receive more than one payment of moneys under this subsection for any campaign.

(d) If the State Elections Enforcement Commission determines that contributions, loans or other funds have been received, or that an expenditure is made, or obligated to be made, by a nonparticipating candidate who is opposed by one or more participating candidates in a primary campaign or a general election campaign, which in the aggregate exceeds one hundred seventy-five per cent of the applicable expenditure limit for the applicable primary or general election campaign period, as defined in subdivision (1) of subsection (b) of section 9-712, the commission shall process a voucher not later than two business days after its determination and the State Comptroller shall draw an order on the State Treasurer for payment, by electronic fund transfer directly into the campaign account of each such participating candidate, not later than three business days after receipt of an authorized voucher from the commission. The commission's determination may be made either on its own initiative to review the contributions, loans or other funds received, or expenditures made or obligated to be made of the nonparticipating candidate or upon request for review by any said participating candidate. Supplemental grant money under this subsection shall only be transmitted to the candidate committee of each such participating candidate who has not made an expenditure in excess of the sum of (1) the amount of the applicable qualifying contributions that the participating candidate is required to receive under section 9-704 to be eligible for grants from the Citizens' Election Fund, and (2)

one hundred per cent of the applicable primary or general election grant. The amount of such additional moneys for each such participating candidate shall be twenty-five per cent of the applicable primary or general election grant. Upon the commission's determination that a participating candidate is entitled to any such additional moneys, the candidate committee may incur the obligation to make such additional expenditures not greater than the amount approved as a supplemental grant received under this subsection. No participating candidate shall receive more than one payment of moneys under this subsection for any campaign.

(e) If the State Elections Enforcement Commission determines that an expenditure is made, or obligated to be made, by a participating candidate who is opposed by one or more other participating candidates in a primary campaign or a general election campaign, which is in excess of the sum of (1) the amount of the applicable qualifying contributions that a candidate is required to receive under section 9-704 to be eligible for grants from the Citizens' Election Fund, and (2) the amount of the applicable grant for said participating candidates for said campaign authorized under section 9-705, the State Elections Enforcement Commission shall immediately notify the State Comptroller and said participating candidates and shall process a voucher equal to the amount of such excess expenditure utilizing the State Comptroller's accounting system. Any such voucher shall be

processed by the commission not later than two business days after its determination that said nonparticipating candidate has made, or incurred the obligation to make, an expenditure or expenditures in such excess amounts. The State Comptroller shall draw an order on the State Treasurer for payment, by electronic fund transfer directly into the campaign account of each such participating candidate, not later than three business days after receipt of an authorized voucher from the commission. The commission's determination may be made either on its own initiative to review the expenditures of the nonparticipating candidate or upon request for review by said participating candidate. Upon the commission's determination that a participating candidate is entitled to any such additional moneys, the candidate committee may incur the obligation to make such additional expenditures not greater than the amount approved as a supplemental grant under this subsection. No participating candidate shall receive more than one payment of moneys under this section for any campaign. Notwithstanding the provisions of this subsection, if the State Comptroller receives a notice described in this subsection from the State Elections Enforcement Commission within the seven-day period preceding a primary or an election or if such additional moneys are held in escrow within the Citizens' Election Fund for the benefit of the candidate committee of any such participating candidate on the seventh day prior to the day of a primary or an election, the State Comptroller (A) shall not hold any such additional

moneys in escrow within the Citizens' Election Fund, and (B) shall immediately pay such additional moneys to the candidate committee of each such participating candidate.

(f) If, during the ninety-six-hour period beginning at five o'clock p.m. on the Thursday preceding the day of a primary or an election, the commission receives a notice from a participating candidate that contributions, loans or other funds have been received, or that an expenditure is made, or obligated to be made, which exceed one hundred per cent, one hundred twenty-five per cent, one hundred fifty per cent, or one hundred seventy-five per cent of the applicable expenditure limit for the applicable primary or general election period, as defined in subdivision (1) of subsection (b) of section 9-712, by an opposing candidate that have not yet been reported to the commission, the commission shall expeditiously review such notice and notify the State Comptroller, who shall immediately process a voucher, utilizing the State Comptroller's accounting system. The amount of such additional moneys for each such participating candidate shall be equivalent to the applicable grant that would be received pursuant to subsection (a), (b), (c), or (d) of this section. Upon the commission's determination that a participating candidate is entitled to any such additional moneys, the candidate committee may incur the obligation to make such additional expenditures not greater than the amount approved as a supplemental grant under this subsection.

(g) The maximum aggregate amount of moneys that the qualified candidate committee of a participating candidate shall receive under subsections (a) to (f), inclusive, of this section for a primary campaign or a general election campaign to match excess expenditures by an opposing candidate shall not exceed (1) the highest amount of excess expenditures by an opposing candidate during said campaign, or (2) the amount of the applicable grant authorized under section 9-705 for said participating candidate for the campaign, whichever is less.

(Oct. 25 Sp. Sess. P.A. 05-5, S. 14; P.A. 06-137, S. 29; P.A. 08-2, S. 19.)

History: Oct. 25 Sp. Sess. P.A. 05-5 effective December 31, 2006, and applicable to elections held on or after that date; P.A. 06-137 amended Subsecs. (a) to (f), inclusive, to provide that additional moneys shall be held in escrow within the Citizens' Election Fund, provide for the processing of payment by voucher by the commission, provide for the timing and means of drawing an order by the State Comptroller and make conforming changes, effective June 6, 2006 (Revisor's note: In Subsecs. (b), (c), (d) and (e), the words "with the seven-day period" were changed editorially by the Revisors to "within the seven-day period" for consistency with identical language in Subsec. (a)); P.A. 08-2 amended Subsecs. (a) to (d) to include references to contributions, loans or other funds received,

delete provisions re obligations that are 90% of applicable grant and holding of funds in escrow, add provisions re contributions, loans or other funds received that exceed 100%, 125%, 150% or 175% of applicable expenditure limits, respectively, commission's processing of voucher for supplemental payments and limitations on transmittal of supplemental grant money, and delete provisions re procedures for payment of supplemental grants on seventh day prior to primary or election, amended Subsec. (e) to delete provision re holding of additional moneys in escrow and add provisions re processing of a voucher and candidate's ability to incur obligations to make additional expenditures and amended Subsec. (f) to provide for processing of a voucher during 96-hour period, effective April 7, 2008.

See Sec. 9-717 re effect of court of competent jurisdiction's prohibiting or limiting the expenditure of funds from the Citizens' Election Fund established in Sec. 9-701.

Sec. 9-714. Independent expenditures: Payment of additional matching moneys to participating candidates. (a) The State Elections Enforcement Commission, (1) upon the receipt of a report under subsection (e) of section 9-612 that an independent expenditure has been made or obligated to be made, with the intent to promote the defeat of a participating candidate whose candidate committee has received a grant under section 9-705 for a primary campaign or a

general election campaign, or (2) upon determining at the request of any such participating candidate that such an independent expenditure has been made or obligated to be made with such intent, shall immediately notify the State Comptroller that additional moneys, equal to the amount of the independent expenditure, shall be paid to the candidate committee of such participating candidate. Not later than two business days following notification by the commission, the State Comptroller shall draw an order on the State Treasurer for payment of such amount to said candidate committee from the Citizens' Election Fund.

(b) If, during the ninety-six-hour period beginning at five o'clock p.m. on the Thursday preceding the day of a primary or an election, the commission receives (1) a report under subsection (e) of section 9-612 that an independent expenditure has been made or obligated to be made, with the intent to promote the defeat of a participating candidate, or (2) a notice from a participating candidate that such an independent expenditure has been made or obligated to be made but not yet been reported to the commission, the commission shall expeditiously review the report or such notice, as the case may be, and notify the State Comptroller, who shall immediately wire or electronically transfer moneys from the fund, in the amount of such independent expenditures confirmed or estimated by the commission, to the qualified candidate

committee of said participating candidate or to any person requested by the participating candidate.

(c) (1) The maximum aggregate amount of moneys that the qualified candidate committee of a participating candidate shall receive under subsections (a) and (b) of this section to match independent expenditures made, or obligated to be made, with the intent to promote the defeat of said participating candidate shall not exceed the amount of the applicable grant authorized under section 9-705 for the participating candidate for the primary campaign or general election campaign in which such independent expenditures are made or obligated to be made.

(2) The additional moneys under subsections (a) and (b) of this section to match independent expenditures shall be granted to the qualified candidate committee of a participating candidate opposed by a nonparticipating candidate only if the nonparticipating candidate's campaign expenditures, combined with the amount of the independent expenditures, exceed the amount of the applicable grant authorized under section 9-705 for the participating candidate for the primary campaign or general election campaign in which such independent expenditures are made or obligated to be made.

(Oct. 25 Sp. Sess. P.A. 05-5, S. 15.)

History: Oct. 25 Sp. Sess. P.A. 05-5 effective

December 31, 2006, and applicable to elections held on or after that date.

See Sec. 9-717 re effect of court of competent jurisdiction's prohibiting or limiting the expenditure of funds from the Citizens' Election Fund established in Sec. 9-701.

Sec. 9-715. Voter registration lists for participating candidates. The Secretary of the State shall provide to each participating candidate a copy of the voter registration list for the state or the applicable district, which is generated from the state-wide centralized voter registration system established pursuant to the plan authorized under section 1 of special act 91-45 and completed pursuant to section 9-50b. The Secretary shall provide the copy in electronic format, free of charge.

(Oct. 25 Sp. Sess. P.A. 05-5, S. 16.)

History: Oct. 25 Sp. Sess. P.A. 05-5 effective December 31, 2006, and applicable to elections held on or after that date.

See Sec. 9-717 re effect of court of competent jurisdiction's prohibiting or limiting the expenditure of funds from the Citizens' Election Fund established in Sec. 9-701.

Sec. 9-716. Annual report on status of Citizens' Election Fund. Insufficient funds. Reserve account. (a) Not later than June 1,

2007, and annually thereafter, the State Elections Enforcement Commission shall issue a report on the status of the Citizens' Election Fund during the previous calendar year. Such report shall include the amount of moneys deposited in the fund, the sources of moneys received by category, the number of contributions, the number of contributors, the amount of moneys expended by category, the recipients of moneys distributed from the fund and an accounting of the costs incurred by the commission in administering the provisions of sections 9-700 to 9-716, inclusive.

(b) Not later than January first in any year in which a state election is to be held, the commission shall determine whether the amount of moneys in the fund is sufficient to carry out the purposes of sections 9-700 to 9-716, inclusive. If the commission determines that such amount is not sufficient to carry out such purposes, the commission shall, not later than three days after such later determination, (1) determine the percentage of the fund's obligations that can be met for such election, (2) recalculate the amount of each payment that each qualified candidate committee is entitled to receive under section 9-706 by multiplying such percentage by the amount that such committee would have been entitled to receive under sections 9-700 to 9-716, inclusive, if there were a sufficient amount of moneys in the fund, and (3) notify each such committee of such insufficiency, percentage and applicable recalculation. After a qualified candidate committee under section 9-706 first

receives any such recalculated payment, the committee may resume accepting contributions, which shall not be subject to the restrictions on qualifying contributions under section 9-704, and making expenditures from such contributions, up to the highest amount of expenditures made by an opposing nonparticipating candidate in the same primary campaign or general election campaign. The commission shall also issue a report on said determination.

(c) The commission shall establish a reserve account in the fund. The first twenty-five thousand dollars deposited in the fund during any year shall be placed in said account. The commission shall use moneys in the reserve account only during the seven days preceding a primary or an election for payments to candidates (1) whose payments were reduced under subsection (b) of this section, or (2) who are entitled to funding to match, during said seven-day period, independent expenditures pursuant to section 9-714.

(Oct. 25 Sp. Sess. P.A. 05-5, S. 17.)

History: Oct. 25 Sp. Sess. P.A. 05-5 effective December 31, 2006, and applicable to elections held on or after that date.

See Sec. 9-717 re effect of court of competent jurisdiction's prohibiting or limiting the expenditure of funds from the Citizens' Election Fund established in Sec. 9-701.

Sec. 9-717. Effect of court of competent jurisdiction's prohibiting or limiting expenditure of funds from Citizens' Election Fund for grants or moneys for candidate committees. (a) If, on or after April fifteenth of any year in which a general election is scheduled to occur, or on or after the forty-fifth day prior to any special election scheduled relative to any vacancy in the General Assembly, a court of competent jurisdiction prohibits or limits, or continues to prohibit or limit, the expenditure of funds from the Citizens' Election Fund established in section 9-701 for grants or moneys for candidate committees authorized under sections 9-700 to 9-716, inclusive, for a period of one hundred sixty-eight hours or more, (1) sections 1-100b, 9-700 to 9-716, inclusive, 9-750, 9-751 and 9-760 and section 49 of public act 05-5 of the October 25 special session* shall be inoperative and have no effect with respect to any race that is the subject of such court order until December thirty-first of such year, and (2) (A) the amendments made to the provisions of the sections of the general statutes pursuant to public act 05-5 of the October 25 special session** shall be inoperative until December thirty-first of such year, (B) the provisions of said sections of the general statutes, revision of 1958, revised to December 30, 2006, shall be effective until December thirty-first of such year, and (C) the provisions of subsections (g) to (j), inclusive, of section 9-612 shall not be implemented until December thirty-first of such year. If, on the April fifteenth of the second year succeeding such

original prohibition or limitation, any such prohibition or limitation is in effect, the provisions of subdivisions (1) and (2) of this section shall be implemented and remain in effect without the time limitation described in said subdivisions (1) and (2).

(b) Any candidate who has received any funds pursuant to the provisions of sections 1-100b, 9-700 to 9-716, inclusive, 9-750, 9-751 and 9-760 and section 49 of public act 05-5 of the October 25 special session* prior to any such prohibition or limitation taking effect may retain and expend such funds in accordance with said sections unless prohibited from doing so by the court.

(Oct. 25 Sp. Sess. P.A. 05-5, S. 55; P.A. 06-137, S. 17.)

*Note: Section 49 of public act 05-5 of the October 25 special session is special in nature and therefore has not been codified but remains in full force and effect according to its terms.

**Public act 05-5 of the October 25 special session is entitled "An Act Concerning Comprehensive Campaign Finance Reform for State-Wide Constitutional and General Assembly Offices". (See Reference Table captioned "Public Acts of October 25, 2005" in Volume 16 which lists the sections amended, created or repealed by the act.)

History: Oct. 25 Sp. Sess. P.A. 05-5 effective

December 7, 2005; P.A. 06-137 designated existing section as Subsec. (a), adding provision re April fifteenth benchmark for court prohibition or limitation of expenditure of funds from the Citizens' Election Fund, increasing period of prohibition or limitation by court from 72 to 168 hours, limiting inoperative effect to any race that is the subject of the court order until December thirty-first and adding provision re effect of prohibition or limitation on the April fifteenth of the second year succeeding the original prohibition, and added Subsec. (b) re retention and expenditure of funds received by a candidate prior to any prohibition or limitation, effective June 6, 2006.

Sec. 9-718. Organization expenditure by party committee, legislative caucus committee or legislative leadership committee for state senator or state representative. Limit for general election and primary campaign. (a) Notwithstanding any provision of the general statutes, no party committee, legislative caucus committee or legislative leadership committee, as defined in section 9-601, shall make an organization expenditure, as defined in subdivision (25) of section 9-601, for the benefit of a participating candidate or the candidate committee of a participating candidate in the Citizens' Election Program for the office of state senator in an amount that exceeds ten thousand dollars for the general election campaign.

(b) Notwithstanding any provision of the general statutes, no party committee, legislative caucus committee or legislative leadership committee, as defined in section 9-601, shall make an organization expenditure, as defined in subdivision (25) of section 9-601, for the purposes described in subparagraph (A) of subdivision (25) of section 9-601 for the benefit of a participating candidate or the candidate committee of a participating candidate in the Citizens' Election Program for the office of state senator for the primary campaign.

(c) Notwithstanding any provision of the general statutes, no party committee, legislative caucus committee or legislative leadership committee, as defined in section 9-601, shall make an organization expenditure, as defined in subdivision (25) of section 9-601, for the benefit of a participating candidate or the candidate committee of a participating candidate in the Citizens' Election Program for the office of state representative in an amount that exceeds three thousand five hundred dollars for the general election campaign.

(d) Notwithstanding any provision of the general statutes, no party committee, legislative caucus committee or legislative leadership committee, as defined in section 9-601, shall make an organization expenditure, as defined in subdivision (25) of section 9-601, for the purposes described in subparagraph (A) of subdivision (25) of section 9-601 for the benefit of a participating

candidate or the candidate committee of a participating candidate in the Citizens' Election Program for the office of state representative for the primary campaign.

(P.A. 06-137, S. 16.)

History: P.A. 06-137 effective December 31, 2006, and applicable to elections held on or after that date.

Secs. 9-719 to 9-749. Reserved for future use.

PART II
FUNDING

Sec. 9-750. Portion of revenues from tax under chapter 208 to be deposited in Citizens' Election Fund if insufficient funds available under section 3-69a. If, for the fiscal year ending June 30, 2006, or any fiscal year thereafter, the amount of funds available under section 3-69a for deposit in the Citizens' Election Fund established in section 9-701 is less than the amount of funds required under said section 3-69a to be deposited in said fund, a portion of the revenues from the tax imposed under chapter 208, equal to the difference between said amounts, shall be deposited in said fund.

(Oct. 25 Sp. Sess. P.A. 05-5, S. 52.)

History: Oct. 25 Sp. Sess. P.A. 05-5 effective January 1, 2006.

See Sec. 9-717 re effect of court of competent jurisdiction's prohibiting or limiting the expenditure of funds from the Citizens' Election Fund established in Sec. 9-701.

Sec. 9-751. Contributions to Citizens' Election Fund. Any person, business entity, organization, party committee or political committee, as such terms are defined in section 9-601, may contribute to the Citizens' Election Fund established in section 9-701. Any such contribution shall be made by check or money order. The State Elections Enforcement Commission shall immediately transmit all contributions received pursuant to this section to the State Treasurer for deposit in the Citizens' Election Fund.

(Oct. 25 Sp. Sess. P.A. 05-5, S. 53.)

History: Oct. 25 Sp. Sess. P.A. 05-5 effective January 1, 2006.

See Sec. 9-717 re effect of court of competent jurisdiction's prohibiting or limiting the expenditure of funds from the Citizens' Election Fund established in Sec. 9-701.

Secs. 9-752 to 9-759. Reserved for future use.

09-3760-cv(L), 09-3941-cv(CON)
Green Party of Connecticut v. Garfield

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

August Term 2009

(Argued January 13, 2010 Decided July 13, 2010)

Docket Nos. 09-3760-cv(L), 09-3941-cv(CON)

GREEN PARTY OF CONNECTICUT, S. MICHAEL DEROSA, LIBERTARIAN PARTY OF CONNECTICUT, ELIZABETH GALLO, JOANNE P. PHILIPS, ROGER C. VANN, BARRY WILLIAMS , and ANN C. ROBINSON,

Plaintiffs-Appellees,

AMERICAN CIVIL LIBERTIES UNION OF CONNECTICUT and ASSOCIATION OF CONNECTICUT LOBBYISTS,

Plaintiffs,

v.

JEFFREY GARFIELD, in his official capacity as Executive Director and General Counsel of the State Elections Enforcement Commission, and RICHARD BLUMENTHAL, in his official capacity as Attorney General,

Defendants-Appellants,

PATRICIA HENDEL, ROBERT N. WORGAFTIK, JACLYN BERNSTEIN, REBECCA M. DOTY, ENID JOHNS ORESMAN, DENNIS RILEY, MICHAEL RION, SCOTT A. STORM S, and SISTE R SALLY J. TOLLES, each in his or her official capacity as a Member or Official of the Office of State Ethics, BENJAMIN BYCEL, in his official capacity as Executive Director of the Office of State Ethics,

Defendants,

AUDREY BLONDIN, COMMON CAUSE OF CONNECTICUT, CONNECTICUT CITIZEN ACTION GROUP, KIM HYNES, and TOM SEVIGNY,

Intervenor-Defendants-Appellants.

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* The Clerk of Court is directed to amend the official caption in this case to conform to the listing of the parties above.

Before KEARSE, CABRANES, and HALL, *Circuit Judges*.

Appeal from a September 2, 2009 judgment of the United States District Court for the District of Connecticut (Stefan R. Underhill, *Judge*). After a bench trial, the District Court determined that Connecticut's Citizen Election Program (CEP), a statutory scheme providing public funds for candidates running for state office, violates the First and Fourteenth Amendments to the United States Constitution.

We reverse the District Court with respect to one count, applying the standard set forth in *Buckley v. Valeo*, 424 U.S. 1, 94-96 (1976), and concluding that the CEP does not unconstitutionally discriminate against minor-party candidates. We affirm the District Court with respect to two other counts, holding that the CEP's so-called "trigger provisions" violate the First Amendment in a manner similar to the law struck down in *Davis v. Federal Election Commission*, 128 S. Ct. 2759 (2008).

The District Court disposed of an additional count in a partial final judgment entered February 11, 2009. We address an appeal of the February 11, 2009 partial judgment in a separately filed opinion.

Judge Kearse dissents in part in a separate opinion.

GREGORY T. D'AURIA, Senior Appellate Counsel (Richard Blumenthal, Attorney General, Perry Zinn Rowthorn, Associate

Attorney General, Maura Murphy Osborne, Assistant Attorney General, *on the brief*) Office of the Attorney General of the State of Connecticut, Hartford, Connecticut,

for defendants-appellants.

IRA M. FEINBERG, Hogan & Hartson LLP, New York, New York (Monica Y. Youn, Angela Migally, and Mimi Marziani, Brennan Center for Justice at the New York University School of Law, New York, New York, and David Dunn, Hogan & Hartson LLP, New York, New York, *on the brief*),

for intervenor-defendants-appellants.

MARK J. LOPEZ, Lewis, Clifton & Nikolaidis, P.C., New York, New York (Benjamin Sahl, American Civil Liberties Union Foundation, New York, New York, *on the brief*), *for plaintiffs-appellees.*

Benjamin Barr, Center for Competitive Politics, Alexandria, Virginia, *for amicus curiae Center for Competitive Politics in support of plaintiffs-appellees.*

William R. Maurer, Institute for Justice, Seattle, Washington, *for amici curiae Dean Martin, Robert Burns, Rick Murphy, Arizona Free*

Enterprise Club's Freedom Club PAC, and Arizona Taxpayers Action Committee in support of plaintiffs-appellees.

JOSÉ A. CABRANES, *Circuit Judge*:

This is the first of two opinions in which we consider a constitutional challenge to certain provisions of Connecticut's Campaign Finance Reform Act (CFRA).

The CFRA, enacted in 2005, represents a comprehensive effort by the Connecticut General Assembly to change the way that campaigns for state office in Connecticut are financed. We consider here a challenge to the Citizens Election Program (CEP), a part of the CFRA that provides public money to candidates running for state office. In our second opinion, which we file separately, we consider a constitutional challenge to restrictions imposed by the CFRA on campaign contributions (and the solicitation of campaign contributions) by state contractors, lobbyists, and their families. *See Green Party of Conn. v. Garfield*, No. 09-0599-cv(L), __ F.3d __ (2d Cir. July 13, 2010).

After a bench trial, the United States District Court for the District of Connecticut (Stefan R. Underhill, *Judge*) ruled, in part, that the CEP violated the First Amendment and the Equal Protection Clause of the Fourteenth Amendment by invidiously discriminating against so-called *minor* political parties and their candidates. *See Green Party of Conn. v. Garfield*, 648 F. Supp. 2d 298 (D. Conn. 2009) ("*Green Party*

II"). We reverse that part of the District Court's judgment and hold that the CEP does not, on this record, invidiously discriminate against minor parties and their candidates.

The District Court also ruled that certain discrete components of the CEP—its so-called "trigger provisions," which include the CEP's "excess expenditure provision" and "independent expenditure provision"—violate the First Amendment by impermissibly restricting the right of candidates and other individuals and organizations to spend their own funds on campaign speech. We affirm that part of the District Court's judgment because we agree that the CEP's trigger provisions violate the First Amendment.

BACKGROUND

We first describe the history of the CEP. We then outline its provisions and briefly recount the procedural history of this action.

I. The History of the CEP

The CFRA—which includes the CEP—was passed in response to several corruption scandals in Connecticut. *Id.* at 306-07. The most widely publicized of the scandals involved Connecticut's former governor, John Rowland. In 2004, Rowland was accused of accepting over $100,000 worth of gifts and services from state contractors, including vacations, flights on a private jet, and renovations to his lake cottage. Rowland accepted the gifts, it was alleged, in exchange for assisting the contractors in securing lucrative state

contracts. Rowland resigned amidst the allegations, and in 2005 pleaded guilty—along with two aides and several contractors – to federal charges in connection with the scandal. Rowland was fined and sentenced to a year and a day in federal prison. *See id.* at 307.

Sadly, the ignominy of public corruption was not limited to Rowland. As the District Court discussed in detail, the "Rowland scandal was but one of the many corruption scandals involving elected officials in state and local government that helped earn the state the nickname 'Corrupticut.'" *See id.* at 307-08 (cataloging the scandals); *see also id.* at 307 & n.9 (discussing the decline of the reputation of Connecticut's state government).

It was in the wake of those scandals that Connecticut lawmakers resolved to enact "expansive campaign finance reforms." *Id.* at 309. In the summer of 2005, Governor M. Jodi Rell established the Campaign Finance Reform Working Group (the "Working Group"), a collection of six state representatives and six state senators who were charged with drafting a new campaign finance reform law. After holding televised hearings for three months, the Working Group proposed an expansive bill, much of which would be incorporated into the final version of the CFRA. *See id.* at 309-10.

In the fall of 2005, Governor Rell called a special session of the General Assembly for the sole purpose of considering the Working Group's proposed bill. After a month of debate, the

General Assembly passed the CFRA, and Governor Rell signed it into law. *See id.* at 300-11. As the District Court set forth in detail, several contemporaneous statements from General Assembly members, as well as Governor Rell, explain that the CFRA was passed "to combat actual and perceived corruption in state government." *Id.* at 311.

Much of the CFRA went into effect on January 1, 2006, but "2008 marked the first election cycle with candidates participating in the CEP public financing scheme." *Id.* at 330; *see also* Conn. Gen. Stat. § 9-702(a) (providing that the CEP becomes effective for the legislative elections in 2008 and for the statewide elections in 2010). Before it went into effect, the CEP was twice amended. *See Green Party II*, 648 F. Supp. 2d at 311, 319-20.

II. The Provisions of the CEP

The CEP is a complicated statutory scheme, *see* Conn. Gen. Stat. § 9-702 *et seq.*, and the District Court took great care in explaining each of its provisions. *See Green Party II*, 648 F. Supp. 2d. at 311-20. We describe only those provisions of the CEP that are relevant to our decision here.

A. Qualification Criteria

Candidates qualify for CEP funding by satisfying one of two types of qualifying criteria—one type for "major party" candidates and one type (with two subtypes) for "minor party" candidates. Under what we will refer to as the

CEP's "statewide qualifying criteria," candidates qualify for CEP funding if they are running on the ticket of a major party. *See* Conn. Gen. Stat. § 9-702(a). A "major party" is defined by the CEP as a party that either (a) had a candidate for governor in the last election who received at least 20% of the vote, or (b) has as members at least 20% of the registered voters in the state. *See id.* § 9-372(5). There are, and have been for some time, only two parties that have achieved "major party" status in Connecticut: the Republican Party and the Democratic Party. *Green Party II*, 648 F. Supp. 2d at 311.

For candidates who are *not* running on the ticket of a major party—that is, for candidates who are running on the ticket of a minor party or who have no party affiliation—there are alternative ways of qualifying for CEP funding. Under what we will refer to as the CEP's "single-election qualifying criteria," a minor-party candidate can qualify for funding in a specific race if a member of his or her party achieved a certain threshold percentage of the vote in the same race in the last election. *See* Conn. Gen. Stat. § 9-705(c)(1), (g)(1). A minor-party candidate can qualify for a full grant of CEP funding if a member of his or her party received 20% of the vote in the same race in the last election; a candidate can qualify for two-thirds of the full amount if a member of his or her party received 15% of the vote in the same race in the last election; and a candidate can qualify for one-third of the full amount if a member of his or her party received 10% of the vote in the same race in the last election. *See id.*

Under what we will refer to as the "petitioning criteria," minor-party candidates can also qualify for CEP funding by collecting a certain number of signatures of those eligible to vote in the race in which they are running. A minor-party candidate can receive a full CEP grant if he or she collects a number of eligible signatures equal to 20% of the votes cast in the same race in the last election; the candidate can receive two-thirds of the full amount if he or she collects a number of eligible signatures equal to 15% of the votes cast in the same race in the last election; and the candidate can receive one-third of the full amount if he or she collects a number of eligible signatures equal to 10% of the votes cast in the same race in the last election. *See id.* § 9-705(c)(2), (g)(2).

Finally, all candidates—whether they qualify under the statewide criteria, the single-election criteria, or the petitioning criteria—must raise a specified amount of money through small "qualifying contributions" of $100 or less. *See id.* § 9-704. The required amount that candidates must raise varies depending on the office sought: candidates for governor, for instance, must raise $250,000 in qualifying contributions, whereas candidates for state representative must raise $5,000 in qualifying contributions. *Id.* § 9-704(a)(1), (4). Otherwise-qualified candidates do not receive CEP funding until they have raised the required qualifying contributions.

B. Distribution Formulae

Once a candidate qualifies for public funds under the CEP, the amount of public money that he or she receives is determined by the CEP's "distribution formulae."

1. Primary Election Grants

Candidates seeking the endorsement of a major party must run in primary elections that are governed by state law. Those candidates receive CEP funding for the primary election in the following amounts: candidates for governor receive $1.25 million; candidates for other statewide offices receive $375,000; candidates for the state senate receive $35,000; and candidates for the state house of representatives receive $10,000. *Id.* § 9-705(a)(1), (b)(1), (e)(1), (f)(1). Like all CEP grants, those amounts will, in the future, be adjusted for inflation. *Id.* § 9-705(d), (h).

A candidate running for the General Assembly receives more money for the primary election if the election takes place in a district that is considered "one-party dominant" and the candidate is a member of the "dominant" party. (As discussed in greater detail below, we will also refer to "oneparty dominant" districts as "safe" districts.) A "one-party dominant" district is defined as a district in which there is a difference of twenty percentage points or more between the number of registered voters for the two major parties. For example, if 55% of the voters in a district were registered Democrats and 35% of the voters were registered Republicans (with 10% unaffiliated or registered with a minor party),

there would be a twenty-percentage-point difference in the number of Democratic and Republican voters, and the candidates running in the Democratic primary would receive extra money: the grant for the Democratic candidate for the state senate would increase to $75,000, and the grant for the Democratic candidate for the state house of representatives would increase to $25,000. *See id.* § 9-705(e)(1)(A), (f)(1)(A).

Currently, no minor party in Connecticut selects its candidates by means of primary elections, but defendants contend that, if a minor party were to hold primary elections, that party's candidates would be eligible for CEP funding. *See Green Party II*, 648 F. Supp. 2d at 312 n.16.

2. General Election Grants

For the general election, the CEP provides the following "full" grants: candidates for governor receive $3 million; candidates for other statewide offices receive $750,000; candidates for the Connecticut Senate receive $85,000; and candidates for the Connecticut House of Representatives receive $25,000. *See* Conn. Gen. Stat. § 9-705(a)(2), (b)(2), (e)(2), (f)(2).

Those full grants may be reduced in certain circumstances. For instance, if a major-party candidate is running unopposed, the CEP grant is reduced to 30% of the full amount. *See id.* § 9-705(j)(3). If a major-party candidate has no major-party competitor but is running against a minor-party candidate who has not qualified for (or accepted) CEP funding, the major-party candidate receives 60% of the full amount. *See id.* § 9-

705(j)(4). If a major-party candidate is running against a minor-party candidate who has, in fact, qualified for CEP funding (or if the minor-party candidate has raised or spent non-public funds equal to the amount of funding the candidate would have received under the CEP), the major-party candidate receives the full grant. *See id.*

C. Expenditure Limits

By participating in the CEP and accepting public funds, candidates agree to accept certain limits on the total amount of money they may spend on their campaigns. In essence, candidates that participate in the CEP may spend only the amount they receive in public funds, plus the amount they raise through the required "qualifying contributions." *See* Conn. Gen. Stat. § 9-702(c). Participating candidates are also permitted to spend a small amount of their own personal funds in certain circumstances. *See id.* §§ 9-702(c), 9-710(c).

D. Trigger Provisions

Finally, under the CEP's so-called "trigger provisions," candidates receive additional funding when certain conditions are triggered. There are two trigger provisions: the "excess expenditure" provision and the "independent expenditure" provision.

The District Court concisely explained the excess expenditure provision:

> The CEP provides matching funds for participating candidates who are outspent by a non-participating

> opponent—who is not bound by any expenditure limit—in the primary or the general election ("excess expenditure trigger"). Conn. Gen. Stat. § 9-713. If a non-participating candidate receives contributions or spends more than an amount equal to the participating candidate's expenditure limit, then the participating candidate is eligible to receive up to four additional grants, each worth 25% of the full grant. *Id.* The excess expenditure grants are distributed whenever the non-participating candidate receives contributions or makes expenditures exceeding 100%, 125%, 150%, and 175% of the expenditure limit for that particular office.

Green Party II, 648 F. Supp. 2d at 315-16.

The independent expenditure provision is similar to the excess expenditure provision, but it applies to private individuals and organizations who make independent expenditures in support of a candidate for office. Again, the District Court concisely explained this provision:

> The CEP also contains a trigger provision tied to independent expenditures made by non-candidate individuals and political advocacy groups . . . . Conn. Gen. Stat. § 9-714. A qualifying independent expenditure is "an expenditure that is made

without the consent, knowing participation, or consultation of, a candidate or agent of the candidate committee and is not a coordinated expenditure," *id.* § 9-601(18), and that is made "with the intent to promote the defeat of a participating candidate." *Id.* § 9-714(a). Matching funds under this provision are triggered when non-candidate individuals or groups make independent expenditures advocating the defeat of a participating candidate, that in the aggregate, and when combined with the spending of the opposing non-participating candidates in that race, exceed the CEP grant amount. *Id.* § 9-714(c)(2). Funds are distributed to the participating candidate on a dollar-per-dollar basis to match the amount of the independent expenditure(s) in excess of the full grant amount. *Id.* § 9-714(a).

Notably, independent expenditures made in *support* of a candidate (without expressly advocating the defeat of an opponent) do not count towards the independent expenditure trigger, meaning individuals and groups are entitled to make unlimited independent expenditures in support of a candidate without triggering CEP matching

> funds for that candidate's opponents. *See generally id.* § 9-714[.]

Id. at 316.

III. This Action

Plaintiffs-appellees ("plaintiffs") brought this action in 2006 claiming that certain provisions of the CFRA (including the CEP) violated the First and Fourteenth Amendments to the United States Constitution.

A. The Parties

Plaintiffs include two minor parties operating in Connecticut: the Green Party of Connecticut and the Libertarian Party of Connecticut. Plaintiffs also include several Connecticut-based lobbyists and state contractors, as well as Michael DeRosa, a member of the Green Party who has run, in the past, for the state senate and for Secretary of the State on the Green Party ticket. *See Green Party II*, 648 F. Supp. 2d at 302-06; J.A. 49-52 (Compl. ¶¶ 10-17).[1]

Defendants-appellants ("defendants") include Jeffrey Garfield, who is named in his official capacity as the Executive Director and General Counsel of the State Elections Enforcement Commission, and Richard Blumenthal, who is named in his official capacity as the Attorney General of the State of

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[1] Citations to the "Complaint" are to the amended complaint filed by the Green Party of Connecticut and others on September 29, 2006.

Connecticut. *See Green Party II*, 648 F. Supp. 2d at 306; J.A. 52 (Compl. ¶¶ 18-19).

The parties in this action also include several individuals and entities who successfully moved to intervene as defendants. The intervenor-defendants-appellants include three former major-party candidates for state office and two advocacy groups: Connecticut Common Cause and Connecticut Citizens Action Group. *See Green Party II*, 648 F. Supp. 2d at 306. The intervenor-defendants defend the constitutionality of the CEP.

B. The Claims

Plaintiffs have organized their claims into five counts.[2] In Count One, plaintiffs claim that the CEP's qualification criteria and distribution formulae, Conn. Gen. Stat. §§ 9-702(b), 704-05, violate the First Amendment and the Equal Protection Clause of the Fourteenth Amendment by invidiously "discriminat[ing]" against minor parties and their candidates. *See* J.A. 66 (Compl. ¶ 53). In Counts Two and Three, plaintiffs assert

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[2] There are two operative complaints in this action: (1) an "amended complaint" filed by the Green Party of Connecticut and others on September 29, 2006, and (2) a "second amended complaint" filed by the Association of Connecticut Lobbyists and Barry Williams on January 16, 2007. In discussing the various "counts" asserted by plaintiffs, we refer to the counts contained in the complaint filed by the Green Party. *See* note 1, *ante*. Count Four of that complaint is, for all relevant purposes, identical to the claims raised in the complaint filed by the Association of Connecticut Lobbyists.

First Amendment challenges to the CEP's excess expenditure provision, Conn. Gen. Stat. § 9-713 (Count Two), and the CEP's independent expenditure provision, *id.* § 9-714 (Count Three). *See* J.A. 66-67 (Compl. ¶¶ 54-55).

In Counts Four and Five, plaintiffs assert First Amendment challenges to aspects of the CFRA that do *not* involve the CEP. In Count Four, plaintiffs challenge the CFRA's bans on contributions (and the solicitation of contributions) by state contractors, lobbyists, and their families. Conn. Gen. Stat. §§ 9-610(g)(h), 9-612(g). In Count Five, plaintiffs challenge disclosure requirements imposed by the CFRA on state contractors. *Id.* § 9-612(h)(2); *see* J.A. 67 (Compl. ¶¶ 56-57).

This opinion addresses Counts One, Two, and Three. Our second, separately filed opinion addresses Count Four. Plaintiffs have not pursued Count Five in these appeals; thus we do not address it.

C. Proceedings in the District Court

The District Court disposed of plaintiffs' claims by means of two separate judgments. The District Court first granted summary judgment for defendants on Count Four, holding that the CFRA's contribution and solicitation bans did not violate the First Amendment. *See Green Party of Conn. v. Garfield*, 590 F. Supp. 2d 288 (D. Conn. 2008) ("*Green Party I*"). On February 11, 2009, the District Court entered a partial final judgment for defendants with respect to Count

Four. *See* Fed. R. Civ. P. 54(b). Plaintiffs filed a timely appeal of that partial final judgment (2d Cir. Docket No. 09-0599-cv(L)), which we address in our separately filed opinion.

The District Court then held a bench trial and, at the end of the trial, granted judgment to plaintiffs on the remaining counts—Counts One, Two, and Three. *See Green Party II*, 648 F. Supp. 2d 298. With respect to Count One, the District Court determined that "the CEP impose[d] an unconstitutional, discriminatory burden on minor party candidates' First Amendment-protected right to political opportunity." *Id.* at 300. With respect to Counts Two and Three, the District Court "conclude[d] that the CEP's excess expenditure and independent expenditure provisions . . . unconstitutionally burden[ed] the plaintiffs' exercise of their First Amendment rights." *Id.* at 302. Accordingly, in a September 9, 2009 final judgment, the District Court declared the CEP unconstitutional and entered a permanent injunction prohibiting defendants from enforcing each of the CEP's provisions. *See id.* at 374. The District Court then stayed the injunction pending this appeal. *See Green Party of Conn. v. Garfield*, No. 3:06-cv-01030, Docket Entry No. 399 (D. Conn. Sept. 29, 2009).

Defendants filed a timely appeal of the District Court's September 9, 2009 judgment on Counts One, Two, and Three, and we address that appeal in this opinion.

DISCUSSION

"We review the district court's findings of fact after a bench trial for clear error and its conclusions of law *de novo*." *Arch Ins. Co. v. Precision Stone, Inc.*, 584 F.3d 33, 38-39 (2d Cir. 2009) (quotation marks omitted). There were, in this case, very few factual disputes for the District Court to resolve at trial. Instead, much of the record in this case consisted of undisputed facts, and in any event, nearly all of the District Court's assessment of plaintiffs' claims involved either pure issues of law or the "application of . . . facts to draw conclusions of law." *Scribner v. Summers*, 84 F.3d 554, 557 (2d Cir. 1996). We therefore review much of the District Court's analysis *de novo*. *See id.* ("The district court's application of . . . facts to draw conclusions of law . . . is subject to *de novo* appellate review." (citing *Travellers Int'l, A.G. v. Trans World Airlines, Inc.*, 41 F.3d 1570, 1575 (2d Cir. 1994))); *see also Bose Corp. v. Consumers Union*, 466 U.S. 485, 501 (1984); *In re Complaint of Messina*, 574 F.3d 119, 128 (2d Cir. 2009); *Davis v. N.Y. City Hous. Auth.*, 278 F.3d 64, 79 (2d Cir. 2002).

COUNT ONE: Whether the CEP Unconstitutionally Discriminates Against Minor-Party Candidates

In Count One, plaintiffs claim that the CEP violates the First Amendment and the Equal Protection Clause of the Fourteenth Amendment by invidiously "discriminat[ing]" against minor-party candidates. *See* J.A. 66 (Compl. ¶ 53).

Plaintiffs' challenge is focused on the CEP's "qualification criteria," which are the criteria by which candidates qualify to receive CEP funding, as well as the CEP's "distribution formulae," which are the formulae that establish the amount of money that the CEP provides to participating candidates. *See id.* According to plaintiffs, the CEP's qualifying criteria and distribution formulae violate the Constitution because they impermissibly burden the "political opportunity" of minor-party candidates. *See Buckley v. Valeo*, 424 U.S. 1, 95-96 (1976) (holding that a public financing system may violate equal protection if it "unfairly or unnecessarily burden[s] the political opportunity of any party or candidate"). "Equal protection analysis in the Fifth Amendment area is the same as that under the Fourteenth Amendment." *Buckley*, 424 U.S. at 93.

The District Court granted judgment for plaintiffs on Count One. The Court determined that the CEP imposed "a severe, discriminatory burden on the political opportunity of minor party candidates," and it held that "despite presenting compelling government interests, the state ha[d] failed to demonstrate how the CEP [was] narrowly tailored to advance those government interests." *Green Party II*, 648 F. Supp. 2d at 361-62.

In our view, the District Court erred in its judgment for plaintiffs on Count One. We conclude that the Connecticut General Assembly enacted the CEP "in furtherance of sufficiently important governmental interests," and we hold that the CEP's qualification criteria and

distribution formulae do not, on this record, "unfairly or unnecessarily burden[ ] the political opportunity of any party or candidate." *Buckley*, 424 U.S. at 95-96. We therefore reverse the District Court on Count One and grant judgment for defendants.

I. The Legal Standard for Plaintiffs' Claim of Unconstitutional Discrimination

In determining the legal standard to apply to Count One, we hew to the Supreme Court's analysis in *Buckley v. Valeo*, which is the principal binding precedent addressing whether a system of public financing for elections unconstitutionally discriminates against minor-party candidates.

Buckley considered, in part, a 1970 federal statute that created a system of public financing for presidential election campaigns. *See Buckley*, 424 U.S. at 85. Several individuals and entities, including minor parties and prospective candidates, *see id.* at 7-8, challenged the law. They claimed, among other things, that it violated the First Amendment and the equal protection component of the Due Process Clause of the Fifth Amendment[3] by "discriminating" against minor-party candidates. *See id.* at 93.

As we set forth in greater detail below, the CEP differs in some ways from the presidential candidate financing system at issue in *Buckley*,

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[3] "Equal protection analysis in the Fifth Amendment area is the same as that under the Fourteenth Amendment." *Buckley*, 424 U.S. at 93.

and our analysis must account for those differences. We are, nonetheless, compelled to apply the legal standard articulated in *Buckley*, as that case addressed exactly the type of claim raised in Count One: a challenge to a public financing system on the ground that it unconstitutionally "discriminates" against minor-party candidates.

We acknowledge that another Supreme Court decision, issued after *Buckley*, ruled on a similar challenge to a public financing system. *See Bang v. Chase*, 442 F. Supp. 758 (D. Minn. 1977), *summarily aff'd sub nom.*, 436 U.S. 941 (1978). That ruling, however, was a summary affirmance of a district court judgment and therefore provides little guidance. As the Supreme Court clarified a year before issuing its summary affirmance in *Bang*, an "unexplicated summary affirmance settles the issues for the parties, and is not to be read as a renunciation by th[e] Court of doctrines previously announced in [its] opinions after full argument." *Mandel v. Bradley*, 432 U.S. 173, 176 (1977) (quotation marks omitted). We therefore heed the Court's warning that "'[a]scertaining the reach and content of summary actions may itself present issues of real substance,'" *id.* (quoting *Hicks v. Miranda*, 422 U.S. 332, 345 n.14 (1975)), and we do not attempt to divine whether the Supreme Court adopted the district court's reasoning in *Bang* or whether the Court affirmed on an entirely different rationale. *See, e.g., Bush v. Vera*, 517 U.S. 952, 996 (1996) (Kennedy, J., concurring) ("We do *not* endorse the reasoning of the district court when we order summary

affirmance of the judgment." (emphasis added)); *Mandel*, 432 U.S. at 176 ("Because a summary affirmance is an affirmance of the judgment only, the rationale of the affirmance may *not* be gleaned solely from the opinion below." (emphasis added)); *see also Morse v. Republican Party*, 517 U.S. 186, n.21 (1996) ("We . . . note that a summary affirmance by this Court is a 'rather slender reed' on which to rest future decisions." (quoting *Anderson v. Celebrezze*, 460 U.S. 780, 784-85 n.5 (1983))).[4]

We also decline plaintiffs' invitation to look for guidance from *Davis v. Federal Election Commission*, 128 S. Ct. 2759 (2008), in deciding plaintiffs' discrimination claim in Count One.[5] *Davis* involved an entirely different claim: the *Davis* plaintiffs challenged the so-called "Millionaire's Amendment," which imposed a "penalty"—in the form of a disadvantageous "asymmetrical regulatory scheme"—on candidates for Congress who spent large amounts of their

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[4] Indeed, Minnesota's public financing system, which was addressed in *Bang*, can be distinguished in many ways from the CEP, and the CEP appears to be far more generous to minor-party candidates than the Minnesota system. Thus, we disagree with the dissent's reliance on *Bang*; in our view, the Supreme Court's summary affirmance in that case could have rested on numerous rationales that have no bearing on this case.

[5] As set forth below, however, we do look to *Davis* in deciding the claims plaintiffs raise in Counts Two and Three, which are distinct in many ways from plaintiffs' claim of unconstitutional discrimination in Count One.

own money on their campaigns. *Id.* at 2766, 2771. *Davis* accordingly addressed a law that burdened the "fundamental" First Amendment right to spend one's own money on one's own campaign. *See id.* at 2771 ("[W]e agree with Davis that this scheme impermissibly burdens his First Amendment right to spend his own money for campaign speech."); *see also id.* (recognizing "the fundamental nature of the right to spend personal funds for campaign speech"). Putting aside the CEP's trigger provisions, which we address below in connection with Counts Two and Three, the CEP does not impose a penalty on a candidate who spends his or her own money on a campaign, for in every race candidates can decline to participate in the CEP.[6] *See id.* at 2772 ("[T]he

[6] We disagree with the dissent's reading of *Davis*, especially its claim that "[a] candidate's First Amendment rights are burdened when the state provides funds only, or in greater amount, to his or her opponent, thereby increasing the opponent's relative position." Dissenting Op. at 2 (citing *Davis*). If that were the case, the First Amendment would prohibit any public financing system that distinguished between plausible candidacies and hopeless candidacies. Yet *Buckley* could not have been clearer that the government has an "interest in not funding hopeless candidacies with large sums of public money," and that interest "necessarily justifies the withholding of public assistance from candidates without significant public support." 424 U.S. at 96; *see also id.* at 97-98 (clarifying that the "Constitution does not require the Government to finance the efforts of every nascent political group," for "[s]ometimes the grossest discrimination can lie in treating things that are different as though they were exactly alike" (quotation marks omitted); *id.* at 97 ('[T]he Constitution does not require Congress to treat all declared candidates the same for public financing purposes . . . [as] there are obvious differences in kind between the needs and

choice involved in *Buckley* was quite different from the choice imposed by [the Millionaire's Amendment]. In *Buckley*, a candidate, by forgoing public financing, could retain the unfettered right to make unlimited personal expenditures. . . . The choice imposed by [the Millionaire's Amendment] is not remotely parallel to that in *Buckley*."). *Davis*, therefore, is inapposite.

In any event, *Davis* in no way suggested that it was overruling *Buckley*. Yet if *Davis*'s analysis were applied here, it could not be reconciled with *Buckley*. As we discuss in greater detail below, *Buckley* placed the burden on the *plaintiffs* to "show[] that the election funding plan disadvantage[d] non-major parties by operating to reduce their strength below that attained without any public financing." 424 U.S. at 98-99 (emphasis added). *Davis*, on the other hand, put the burden on the *government* to defend the statute in question. *See* 128 S. Ct. at 2772-74. *Buckley*, moreover, required that the presidential-campaign financing system be justified by a "sufficiently important" state interest, 424 U.S. at 95-96; *see* note 7, *post*; whereas *Davis* applied a more searching standard and required that the Millionaire's Amendment be justified by a "compelling state interest," 128 S. Ct. at 2772 (quotation marks omitted). Because *Buckley*, not

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potentials of a political party with historically established broad support, on the one hand, and a new or small political organization on the other." (citation and quotation marks omitted)).

Davis, addressed the same type of claim as the one raised here, and because there is no indication that *Davis* was meant to overrule *Buckley*'s analysis of the presidential-campaign financing system (even *sub silentio*), we look to *Buckley* for the legal standard by which to assess plaintiffs' claim of unconstitutional discrimination in Count One.

We therefore closely examine the legal standards applied in *Buckley*, and we describe how the District Court did—and did not—apply those standards correctly.

A. The Standard Set Forth in *Buckley v. Valeo*

Buckley first determined that the public financing system was "a congressional effort, not to abridge, restrict, or censor speech, but rather to use public money to facilitate and enlarge public discussion and participation in the electoral process, goals vital to a self-governing people." 424 U.S. at 92-93. Accordingly, *Buckley* rejected the plaintiffs' First Amendment challenge out of hand, holding that the presidential-candidate financing system only "further[ed]," and did "not abridge[ ]," the "pertinent First Amendment values." *Id.*

Turning to the discrimination claim—that is, the claim that the presidential-candidate financing system violated the requirement of equal protection of the laws in its differential treatment of minor-party candidates and major-party candidates—*Buckley* initially questioned whether the "exacting scrutiny" standard should

apply to the system. *Id.* at 93-94. *Buckley* cited several precedents and observed that, at the time, a "principle ha[d] been developed that restrictions on access to the electoral process must survive exacting scrutiny." *Id.* Yet *Buckley* distinguished those precedents, finding them inapplicable because they "dealt primarily with state laws requiring a candidate to satisfy certain requirements in order to have his name appear on the ballot." *Id.* at 94. Such laws, *Buckley* reasoned, were "direct burdens not only on the candidate's ability to run for office but also on the voter's ability to voice preferences regarding representative government and contemporary issues." *Id.* A public financing system, in contrast, was "not restrictive of voters' rights and less restrictive of candidates' [rights]," because the system did "not prevent any candidate from getting on the ballot or any voter from casting a vote for the candidate of his choice." *Id.* As a result, *Buckley* determined that "public financing is generally *less restrictive* of access to the electoral process than the ballot-access regulations dealt with in prior cases." *Id.* at 95 (emphasis added).

Buckley did not, however, complete that line of reasoning and establish a less searching standard for equal protection challenges to public financing systems. Instead, *Buckley* determined that the presidential-candidate financing system could be upheld even assuming, for the sake of analysis, that the correct standard was "exacting scrutiny." After distinguishing the precedents that had applied the "exacting scrutiny" standard, *Buckley* held: "*In any event*, Congress enacted [the

presidential-candidate financing system] in furtherance of sufficiently important governmental interests and has not unfairly or unnecessarily burdened the political opportunity of any party or candidate." *Id.* at 95-96 (emphasis added).

Following *Buckley*, therefore, the starting point for a court in determining whether a public financing system unconstitutionally discriminates against minor parties is to assume, for the sake of analysis, that the correct standard is the version of "exacting scrutiny" articulated in *Buckley*. Under that standard, a court must first examine whether the system was "enacted . . . in furtherance of sufficiently important governmental interests." *Id.* at 95.[7] The court must then determine whether the system "burden[s] the political opportunity of any party or candidate" in a way that is "unfair[ ]" or "unnecessar[y]." *Id.* at 96. If the public financing system fares favorably under that two pronged

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[7] We note that *Buckley* also refers to the requisite governmental interest as "vital" or "significant." 424 U.S. at 94, 96. The Supreme Court recently clarified that "exacting scrutiny" requires "a *sufficiently important* governmental interest." *Citizens United v. Fed. Election Comm'n*, 130 S. Ct. 876, 914 (2010) (emphasis added) (quotation marks omitted); *see* note 9, *post*. Thus, in applying the exacting scrutiny standard here, we use the term "sufficiently important" to describe the governmental interest that the Constitution requires. We note, however, that our analysis would be no different if we required a "vital" or "significant" governmental interest because the interests served by the CEP would meet both of those standards.

test, the inquiry is over—the system does not violate the Constitution.

If, however, the public financing system fails under *Buckley*'s version of the "exacting scrutiny" standard—that is, if the system furthers *insufficiently* important governmental interests, or if the system does, in fact, burden the political opportunity of a party or candidate in a way that is *unnecessary* or *unfair*—then the court must proceed to a second step of the inquiry: the court must finish the line of reasoning that *Buckley* left unresolved and determine whether a less searching standard applies.

Here, in resolving plaintiffs' claim in Count One, we are not required to perform that second step of the inquiry because, as we set forth in greater detail below, we, like the Supreme Court in *Buckley*, reject plaintiffs' claim of unconstitutional discrimination even applying *Buckley*'s version of "exacting scrutiny." Nonetheless, we conclude that if, in another case, a court determines that a public financing system *cannot* withstand *Buckley*'s version of "exacting scrutiny," the court must proceed to the second step of the inquiry, finish the line of reasoning that *Buckley* left unresolved, and determine whether a less searching standard applies.[8]

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[8] The dissent would affirm the District Court on Count One and strike down the CEP. *See* Dissenting Op. 2-3. Were we to follow the dissent's rationale, therefore, we *would* be required to perform this second step of the inquiry and determine whether a less searching standard applies. This the dissent does not do.

* * *

In sum, when a plaintiff claims that a public financing system violates the First Amendment and the Equal Protection Clause in its differential treatment of minor-party candidates and major-party candidates, a court should employ the following analysis: The court should first assume that *Buckley*'s version of "exacting scrutiny" applies and determine (a) whether the system was enacted in furtherance of a sufficiently important governmental interest and (b) whether the system burdens the political opportunity of a party or candidate in a way that is unfair or unnecessary. If the system fails under *Buckley*'s version of the "exacting scrutiny" standard, the court should then complete *Buckley*'s unresolved line of reasoning and determine whether a less searching standard applies. If the court determines that a less searching standard applies, the court should then evaluate the public financing system under that less searching standard.

B. The District Court's Erroneous Application of Strict Scrutiny

Before proceeding to the merits of plaintiffs' discrimination claim, we must clarify that the District Court erred in applying strict scrutiny to evaluate plaintiffs' claim.

The District Court began its analysis by applying the correct legal standard, as it first examined, at length, whether the CEP "'unfairly or unnecessarily burden[ed] the political opportunity of any party or candidate'"—that, of

course, is one part of *Buckley*'s version of the "exacting scrutiny" standard. *Green Party II*, 648 F. Supp. 2d at 333-34 (quoting *Buckley*, 424 U.S. at 96). Ultimately, the District Court concluded that the CEP did, in fact, impermissibly burden the political opportunity of minor-party candidates. That is a legal conclusion that we reverse, as set forth below.

Nonetheless, assuming, for the sake of analysis, that the District Court was correct to hold that the CEP impermissibly burdened the political opportunity of minor-party candidates, the Court was, at that point, required to proceed to a second step of the inquiry—to determine whether a less searching standard applied in evaluating plaintiffs' discrimination claim. Yet the District Court did exactly the opposite: it held that "strict scrutiny"—a *more* searching standard—applied in evaluating plaintiffs' discrimination claim.[9]

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[9] Alternatively, the District Court may have believed that "strict scrutiny" and "exacting scrutiny" were the same standard. *See, e.g.*, *Green Party II*, 648 F. Supp. 2d at 350 (noting at one point that "'exacting scrutiny,' *i.e.*, strict scrutiny, should apply"). But as the Supreme Court has recently clarified, those standards are different. *Compare Citizens United*, 130 S. Ct. at 898 (explaining that "strict scrutiny" requires "the Government to prove that the restriction furthers a compelling interest and is narrowly tailored to achieve that interest" (quotation marks omitted)), *with id.* at 914 (explaining that "exacting scrutiny" requires "a substantial relation" between the restriction and "a sufficiently important government interest" (quotation marks omitted)).

In applying strict scrutiny, the District Court relied on two cases from our sister Circuits, *Daggett v. Commission on Governmental Ethics & Election Practices*, 205 F.3d 445, 466 (1st Cir. 2000), and *Rosenstiel v. Rodriguez*, 101 F.3d 1544, 1553 (8th Cir. 1996). In those cases, candidates claimed that a state public financing system violated the First Amendment because it was overly "coercive," effectively *requiring* that every candidate accept public money. The courts applied strict scrutiny because they concluded that the right to decline public funds—and to raise and spend one's own money in an election campaign—was a "fundamental" right protected by the First Amendment.

We have no occasion to address whether strict scrutiny was the correct standard to evaluate the claims raised in *Daggett* and *Rosenstiel*. We note only that the claims raised in those cases were far different from the claim raised by plaintiffs in Count One: the plaintiffs in *Daggett* and *Rosenstiel* claimed that a public financing system was overly "coercive" and thereby violated the First Amendment, whereas plaintiffs here claim that a public financing system unconstitutionally discriminates in its differential treatment of minor-party candidates and major-party candidates. The District Court's reliance on *Daggett* and *Rosenstiel* was, therefore, misplaced.

It is, instead, *Buckley* that provides the best guidance in this context, as *Buckley* addressed the same type of claim that plaintiffs raise in Count One. Again, as we have explained,

in no event does *Buckley* suggest that "strict scrutiny"—a standard that is *more* demanding than "exacting scrutiny"--applies to the type of claim raised in Count One.

In sum, the District Court erred in applying strict scrutiny.

II. The Merits of Plaintiffs' Claim of Unconstitutional Discrimination

Having clarified the legal standard with which to evaluate plaintiffs' claim of unconstitutional discrimination in Count One, we now turn to the merits of that claim. As explained above, we will follow *Buckley*'s example and assume for the sake of analysis that Buckley's version of "exacting scrutiny" applies. Thus we ask (a) whether the CEP was enacted in furtherance of a sufficiently important governmental interest and (b) whether the CEP burdens the political opportunity of a party or candidate in a way that is *unfair* or *unnecessary*. *See Buckley*, 424 U.S. at 95-96.

The answer to the first question—whether the CEP furthers a sufficiently important governmental interest—is straightforward. As *Buckley* held, "public financing as a means of eliminating improper influence of large private contributions furthers a significant governmental interest." *Id.* at 96. The District Court found that the CEP was enacted in furtherance of several goals, including to eliminate improper influence on elected officials. *See Green Party II*, 648 F. Supp. 2d at 309 (explaining that the CEP was "[s]purred in large part by the fall-out from the

corruption scandals that culminated in the resignation of Governor Rowland and his subsequent indictment and conviction"). Accordingly, the District Court held that the CEP was enacted to further a sufficiently important governmental interest. *See id.* at 351. We agree with that holding.

The answer to the second question—whether the system burdens the political opportunity of a candidate in a way that is unfair or unnecessary—is more complicated. Plaintiffs claim, primarily, that three aspects of the CEP impermissibly burden their political opportunity: (1) the CEP's single-election qualification criteria, (2) the CEP's statewide qualification criteria, and (3) the CEP's distribution formulae. We address each aspect of the CEP in turn.

A. The Single-Election Qualification Criteria

The District Court determined that the CEP's single-election qualification criteria, *see generally* Conn. Gen. Stat. § 9-705, impermissibly burdened the political opportunity of minor-party candidates because the criteria "ma[de] it extremely difficult for minor party candidates to become eligible for even partial public funding," *Green Party II*, 648 F. Supp. 2d at 344. We cannot agree with that application of law to fact.

1. The CEP May Condition Public Funds on a Showing of Popular Support in the Previous Election

As an initial matter, *Buckley* held that a public financing system may condition a grant of public money on a showing that the candidate already enjoys a certain threshold level of popular support. The reason is twofold: First, the government has an "interest in not funding hopeless candidacies with large sums of public money," and that interest "necessarily justifies the withholding of public assistance from candidates without significant public support." *Buckley*, 424 U.S. at 96 (citation omitted). Thus the "Constitution does not require the Government to finance the efforts of every nascent political group," for "[s]ometimes the grossest discrimination can lie in treating things that are different as though they were exactly alike." *Id.* at 97-98 (quotation marks omitted); *see also id.* at 97 ("[T]he Constitution does not require Congress to treat all declared candidates the same for public financing purposes . . . [as] there are obvious differences in kind between the needs and potentials of a political party with historically established broad support, on the one hand, and a new or small political organization on the other." (citation and quotation marks omitted)). In other words, *Buckley* recognized that if the Constitution were to require the presidential-candidate financing system to fund every minor-party candidate, the Constitution would provide the means for fly-by-night candidates to "raid the

United States Treasury." *Id.* at 98 (quotation marks omitted).

The second reason that a public financing system may condition public money on a showing of popular support is that limiting an election to a small number of strong candidates "serves the important public interest against providing artificial incentives to splintered parties and unrestrained factionalism." *Id.* at 96 (quotation marks omitted). That is, to fund every minor-party candidate would risk a fractured and chaotic election, "artificially foster[ing] the proliferation of splinter parties." *Id.* at 98 (quotation marks omitted).

Accordingly, the CEP may, consistent with the First Amendment and the Equal Protection Clause, distinguish between candidates who can, and who cannot, make a preliminary showing of public support, providing funds to those who can and withholding funds from those who cannot.

In addition, "popular vote totals in the last election are a proper measure of public support." *Id.* at 99 (citing *Jenness v. Fortson*, 403 U.S. 431, 439-40 (1971)). The CEP's use of vote totals from the previous election, therefore, is a permissible way to distinguish between candidates who do and do not enjoy the required threshold level of popularity.

2. We Draw from *Buckley* Four Principles to Evaluate Whether the CEP's Qualification Criteria Impose a Burden on Political Opportunity That Is "Unfair" or "Unnecessary"

Having established that it is permissible for the CEP to condition public funding on a preliminary showing of public support—and that the CEP may use prior vote totals to measure that support—we now ask whether the CEP's single election qualification criteria of 10%, 15%, and 20% of the vote in the past election are set so high as to burden the political opportunity of a party or candidate in a way that is unfair or unnecessary. Although *Buckley* did not expressly define "unfair" or "unnecessary," we draw from *Buckley*'s analysis four principles that illuminate what *Buckley* meant by those terms.

(i) A public financing system may condition public funds on a threshold level of public support that is relatively high, as *Buckley* held that a public financing system may "require 'some preliminary showing of a *significant* modicum of support' as an eligibility requirement for public funds." *Buckley*, 424 U.S. at 96 (quoting *Jenness v. Fortson*, 403 U.S. at 442) (emphasis added, citation omitted); *see also Buckley*, 424 U.S. at 96 (concluding that the government's "interest in not funding hopeless candidacies . . . necessarily justifies the withholding of public assistance from candidates without *significant* public support"

(emphasis added)); *cf. id.* (noting that the government has been "held to have important interests in limiting places on the ballot to those candidates who demonstrate *substantial* popular support" (emphasis added)). In other words, a public financing system need not provide funding to every candidate who can demonstrate *some* public support; the system may, instead, condition public money on a preliminary showing of "significant" public support.

That is not to say, of course, that *any* threshold would pass constitutional muster. *Buckley* established an important role for courts in evaluating whether public financing systems unconstitutionally discriminate against a candidate or party, instructing courts to determine whether a public financing system is appropriately tailored[10] to avoid a burden on

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[10] We note that the version of "exacting scrutiny" that *Buckley* applied in evaluating the challenge to the presidential campaign financing system did not require that the system be *tailored* to the asserted government interests. *Buckley* did not, for instance, evaluate whether the presidential candidate financing system was "substantially related" to the government's interest in limiting the improper influence of donors. *See Citizens United*, 130 S. Ct. at 914 (explaining that "exacting scrutiny" typically requires "a substantial relation" between the law and "a sufficiently important governmental interest" (quotation marks omitted)). Nor did *Buckley* apply a different standard and ask whether the presidential public financing system was "closely drawn" or "narrowly tailored." Instead, *Buckley* expressed the concept of *tailoring* in somewhat different terms: a public financing system may violate equal protection if it burdens the political opportunity of a party or candidate in a way that is *unnecessary* or *unfair*. *Buckley*, 424 U.S. at 96.

political opportunity that is unfair or unnecessary.

(ii) Yet *Buckley* also cautioned that there was, "[w]ithout any doubt[,] a range of formulations" of public financing systems that "would sufficiently protect the public fisc and not foster factionalism, and would also recognize the public interest in the fluidity of our political affairs." *Id.* at 103-04. *Buckley* made clear, moreover, that in establishing the required threshold level of public support, "the choice of the percentage requirement that best accommodate[d] the competing interests involved was for Congress to make." *Id.* at 103. Accordingly, although courts play an important role in assessing whether a public financing system is properly tailored, *Buckley* warned that a court's constitutional review should be circumscribed by deference to the legislative branch in its choice from among the "permissible range" of qualification criteria. *See id.* at 103-04.

We think, nonetheless, that *Buckley*'s standard encompassed a tailoring requirement. In asking whether a burden is *unnecessary*, the standard implies that, although a public financing system may impose *some* burden on the political opportunity of a party or candidate, it may not impose a burden that is substantially greater than necessary to achieve the desired outcome. Thus we think it is accurate to say that a court evaluating a claim of unconstitutional discrimination must determine whether a public financing system is appropriately *"tailored"* to avoid a burden on the political opportunity of a party or candidate that is unfair or unnecessary.

(iii) We also note with care that *Buckley* placed the evidentiary burden of demonstrating unconstitutional discrimination squarely on the plaintiffs. *Buckley*'s approval of the presidential candidate financing system rested largely on the fact that the plaintiffs had "made *no showing* that the election funding plan disadvantage[d] nonmajor parties by operating to reduce their strength below that attained without any public financing." *Id.* at 98-99 (emphasis added). In other words, in this context, the evidentiary burden is not on the government to show that a public financing system comports with the Constitution; it is on the plaintiffs to show that the system does not. To determine whether the plaintiffs have succeeded, moreover, the central question a court must ask is whether the plaintiffs have shown that the system has "operat[ed] to reduce their strength below that attained without any public financing." *Id.*

(iv) Finally, in upholding the presidential-candidate financing system, *Buckley* instructed that courts should avoid reasoning based on speculation and should, instead, require tangible evidence of the "practical effects" of the public financing system. *See id.* at 101 (upholding the system in part because "[a]ny risk of harm to minority interests is speculative due to [a general] lack of knowledge of the practical effects of public financing"); *see also id.* at 97 n.131 (declining to "rule out the possibility of concluding in some future case, *upon an appropriate factual demonstration*, that the public financing system invidiously discriminates against non-major parties" (emphasis added)). Thus, when a court

evaluates a claim like the one presented here by asking whether the public financing system has "operat[ed] to reduce the[ ] strength" of minor parties "below that attained without any public financing," *id.* at 98-99, the court should avoid speculative reasoning and focus instead on the evidence, if any, of the system's practical effects.

* * *

In sum, although *Buckley* did not expressly define "unfair" or "unnecessary," we draw from *Buckley* four principles that clarify the meaning of those terms:

> (i) A public financing system may establish qualification criteria that condition public funds on a showing of "significant" public support. *See Buckley*, 424 U.S. at 96.
>
> (ii) There is a range of permissible qualification criteria, and although a public financing system must be tailored to avoid an unfair or unnecessary burden on the political opportunity of a party or candidate, a court must defer to a legislature's choice of criteria so long as those criteria are drawn from the permissible range. *See id.* at 103-04.
>
> (iii) In assessing whether a burden is unfair or unnecessary, the central question is whether the *plaintiffs* have shown that the system has reduced the "strength" of minor parties below

that attained before the system was put in place. *Id.* at 98-99.

(iv) To determine whether the "strength" of minor parties has been reduced, a court should avoid speculative reasoning and instead focus on the evidence, if any, of the system's "practical effects." *Id.* at 101.

We bear those principles in mind as we assess the CEP's single-election qualification criteria.

3. Under *Buckley*'s Four Principles, the CEP's Single-Election Qualification Criteria Are, on This Record, Constitutional

Acknowledging that the CEP may condition public funds on a "significant" showing of public support in the previous election, *Buckley*, 424 U.S. at 96, our intuition suggests that the CEP's single-election qualification criteria—20% of the vote for full funding, 15% for two-thirds funding, and 10% for one-third funding—come close to the outer edge of the constitutionally permissible range. A public financing system must account for the "potential fluidity of American political life," *id.* at 97 (quotation marks omitted), including the fact that minor-party candidates do, occasionally, defeat major-party opponents. Conditioning public funds on too high of a showing in the previous election risks entrenching the major parties and shutting out the rare minor-party candidate who is

able to garner enough public support to win an election.

Nevertheless, following *Buckley*'s example, we must look beyond our intuition to the concrete evidence of the CEP's "practical effects." In so doing, we find that data from the 2008 election contradict our intuition and show that a substantial number of minor-party candidates will be eligible for public funding in 2010 under the single-election qualification criteria. Indeed, over *one third* of the minor-party candidates (fifteen out of forty) who ran in the 2008 General Assembly elections received at least 10% of the vote, thereby qualifying themselves (or another member of their party) to receive partial funding in the same race in the 2010 election. *Green Party II*, 648 F. Supp. 2d at 324. Five of those fifteen candidates—representing fully *one eighth* of all minor-party candidates—received over 20% of the vote and qualified for *full* funding in 2010. *Id.* Those record facts show that, although the CEP's qualification criteria are high, they are not, as our intuition suggested, set so high as to shut-out minor-party candidates who enjoy public support.[11]

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[11] The presidential campaign financing system at issue in *Buckley* provided full funding to candidates from "major parties." 424 U.S. at 87. "Major party" was defined as "a party whose candidate for President in the most recent election received 25% or more of the popular vote." *Id.* The system provided partial funding to candidates from "minor parties." "Minor party" was defined as "a party whose candidate received at least 5% but less than 25% of the vote at the most recent election." *Id.* Minor-party candidates received "a portion of the major-party entitlement

Furthermore, even if the CEP's single-election qualification criteria impose some burden on the political opportunity of minor-party candidates, to evaluate whether the burden is unfair or unnecessary we must examine principally whether plaintiffs have shown that the CEP has "operat[ed] to reduce their strength below that attained without any public financing." *Buckley*, 424 U.S. at 98-99. Searching

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determined by the ratio of the votes received by the party's candidate in the last election to the average of the votes received by the major-parties' candidates." *Id.* at 88.

It is difficult to compare the qualifying criteria of the presidential campaign financing system to the qualifying criteria of the CEP. On one end, the presidential campaign financing system appears to have involved less demanding qualifying criteria, as partial funding began at 5% of the vote in the last election (compared to 10% under the CEP). But on the other end, the presidential campaign financing system also appears to have involved more demanding qualifying criteria, as full funding was not made available until a party received 25% of the vote in the last election (compared to 20% under the CEP). Moreover, the presidential-campaign financing system provided funding only if a party's candidate received 5% of the *nationwide* vote for president—undoubtedly a difficult achievement for a minor party. By contrast, the CEP provides funding if a minor party achieves only 10% of the vote of a single state legislative district—a more attainable goal. The CEP, therefore, makes it both more difficult and less difficult for minor parties to qualify for funding.

In any event, nothing in *Buckley* suggested that the qualifying criteria for the presidential campaign financing system were the most stringent criteria that could be found permissible under the Constitution.

the record, we find insufficient evidence in support of that claim. To the contrary, uncontroverted facts in the record show that minor-party candidates as a whole are arguably *stronger*—and certainly not weaker—under the CEP.

In 2006, the election immediately before the CEP went into effect, *zero* minor-party candidates received between 15% and 19% of the vote and *one* minor-party candidate received more than 20% of the vote in legislative races. *Green Party II*, 648 F. Supp. 2d at 322-23. Yet in 2008, after the CEP went into effect for legislative elections, minor-party candidates achieved more success at the polls: *four* minor-party candidates received between 15% and 19% of the vote and *five* minorparty candidates received more than 20% of the vote in legislative races. *Id.* at 324. This shows that, insofar as particular minor-party candidates are failing to qualify for public financing because of the CEP's high qualification criteria, minor-party candidates as a whole are nonetheless just as strong—if not stronger—than they were before the CEP went into effect.[12] Their

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[12] Although plaintiff Michael DeRosa appears to have done somewhat *worse* in his 2008 race for state senate than the two previous times he ran for that office, *see Green Party*, 649 F. Supp. 2d at 304, we look to how minor-party candidates fared in 2008 *as a whole*. That, we think, is the better measure of the CEP's effect on minor parties and their candidates, for examining the success of all minor-party candidates tends to diminish the idiosyncracies of individual races in which minor-party candidates could suffer setbacks due to myriad factors unrelated to campaign financing.

political opportunity, therefore, does not appear to have been burdened in a way that is unfair or unnecessary.[13]

We recognize that in reaching this conclusion, we have relied on data from only one election. Once the CEP has been in place for additional election cycles, there may develop a more complete picture of its effect on minor-party candidates. Following *Buckley*, therefore, "we of course do not rule out the possibility of concluding in some future case, upon an appropriate factual demonstration," that the CEP's single-election qualification criteria *have*, in fact, "operat[ed] to reduce the[ ] strength" of minor parties "below that attained without any public financing." 424 U.S. at 97 n.131, 98-99. At present, however, and

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[13] We note that plaintiffs' challenge to the CEP's qualification criteria would have been more compelling if there were evidence of a block of voters who would support a minor-party candidate if only the candidate could communicate to the voters using public funds. Such evidence, however, does not exist. Putting aside the *sui generis* candidacy of former Governor Lowell Weicker (who was, until running for governor on the "A Connecticut Party" line, a Republican), no minor-party candidate in Connecticut has won *any* election in recent memory. Indeed, although there were 179 minor-party candidates on the ballot in the three elections before the CEP went into effect, none of those candidates came close to winning an election (and only four of those candidates received more than 20% of the vote). *Green Party II*, 648 F. Supp. 2d at 322. The voters of Connecticut, therefore, have shown little inclination to support the candidacies of those running on the line of minor parties, and as a result, the political opportunity of minor-party candidates in Connecticut was, before the CEP, already insubstantial.

on the record before us, there is insufficient evidence to conclude that the CEP has burdened the political opportunity of minor-party candidates in a way that is unfair or unnecessary.[14]

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In sum, although our intuition might suggest, as an abstract principle, that the CEP's single-election qualification criteria—20% of the vote for full funding, 15% for two-thirds funding, and 10% for one-third funding—come close to the outer edge of the constitutionally permissible range, the facts of record (most importantly, the 2008 election data) show that the qualification criteria are not so onerous as to deny funding to a sizeable number of minor-party candidates who enjoy substantial public support. Moreover, insofar as the CEP's single-election qualification criteria may impose *some* burden on the political opportunity of minor-party candidates, the 2008 election shows that minor-party candidates as a whole are arguably stronger—and certainly not weaker—under the CEP. There is, therefore, little

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[14] Because the CEP's single-election qualification criteria survive plaintiffs' constitutional challenge, we do not discuss the CEP's separate petitioning criteria. That is, the existence of an *alternative* qualification method under the statute is irrelevant to our inquiry. Even if the petitioning criteria are too onerous for a minor-party candidate to achieve, the single-election criteria are *not*, on this record, too onerous for a minor-party candidate to achieve, and thus there is insufficient evidence to conclude that the CEP impermissibly burdens the political opportunity of minor-party candidates.

reason to think that the CEP has burdened the political opportunity of minor-party candidates in a way that is unfair or unnecessary. Giving proper deference to the Connecticut General Assembly to choose qualification criteria that "best accommodate[ ] the competing interests involved," we "cannot say that" the General Assembly's "choice falls without the permissible range." *Id.* at 103-04.

Accordingly, we hold that plaintiffs have presented insufficient evidence on this record to establish that the CEP's single-election qualification criteria violate the First Amendment or the Equal Protection Clause. We therefore hold that the District Court erred in concluding that the single-election qualification criteria unconstitutionally discriminate against minor parties and their candidates.

B. The Statewide Qualification Criteria

Plaintiffs also claim that the CEP's *statewide* qualification criteria, *see* Conn. Gen. Stat. § 9-702, impose an unfair or unnecessary burden on the political opportunity of minor-party candidates. The District Court agreed with plaintiffs, determining the statewide qualification criteria "substantially enhance[d] the relative strength of major party candidates compared to minor party candidates [by] . . . encourag[ing] major parties to field candidates for historically uncompetitive seats, without regard to their likelihood of success." *Green Party II*, 648 F. Supp. 2d at 344.

The District Court's analysis focused on the effect of the statewide criteria in so-called *safe* or *uncompetitive* legislative districts, which are districts in which the candidate of one of the major parties is essentially assured of winning. In the state senate district encompassing New Haven, for example, less than 5% of all registered voters are Republican. *See id.* at 326 & n.33. Thus the New Haven state senate district is considered a *safe* district for the Democratic Party, since the Democratic candidate is almost certain to win the race for that seat.

The District Court observed that in safe districts, one of the major-party candidates (*e.g.*, the Republican candidate in New Haven) often fails to achieve 20% of the vote in an election and therefore would not qualify for CEP funding under the single-election qualification criteria. Under the statewide qualification criteria, however, that major-party candidate *would*, nevertheless, qualify for CEP funding, as the candidate would be on a ticket of a "major" party whose gubernatorial candidate achieved at least 20% of the vote in the last election. *See* Conn. Gen. Stat. §§ 9-372(5), 9-702. The District Court concluded, as a result, that the statewide qualification criteria "unfairly favor[ed] competition between major party candidates over competition from minor party candidates and thereby burden[ed] the political opportunity of minor party candidates." *Green Party II*, 648 F. Supp. 2d at 344.

Once again, we cannot agree with the District Court's application of law to fact.

1. There Is Insufficient Evidence to Conclude That the Statewide Qualification Criteria Have Imposed an Unfair or Unnecessary Burden on Minor-Party Candidates in Safe Districts

We acknowledge that *Buckley* did not address the unique circumstances created by safe districts, as safe districts are not a feature of nationwide presidential elections. We do not, however, think that this is reason to abandon *Buckley*'s basic standard or analytical framework in assessing a burden on political opportunity.

Examining, then, the record evidence of how the CEP has affected minor-party candidates, we find insufficient evidence in the record to conclude that the CEP's statewide eligibility criteria has "reduce[d]" the "strength" of minor-party candidates in safe districts "below that attained without any public financing." *Buckley*, 424 U.S. at 99. To the contrary, as we set forth above, the record here reveals that minor-party candidates as a whole, many of them running in safe districts, appear to have done better in 2008, and certainly no worse. *See Green Party II*, 648 F. Supp. 2d at 323-24. Thus we cannot conclude, on this record, that the statewide eligibility criteria impose an unfair or

unnecessary burden on minor-party candidates in safe districts.[15]

2. Even if We Were to Speculate About the Effect of the Statewide Qualification Criteria, Our Speculation Would Be Inconclusive

Even if we were to ignore *Buckley*'s guidance and engage in speculation (which we do not think is proper), we would lack confidence in any of our guesses about how the statewide eligibility criteria will affect the political opportunity of minor-party candidates in safe districts.

It is quite likely, for instance, that the statewide eligibility criteria will have no effect at all on the political opportunity of minor-party candidates in safe districts. The record shows that in the 2008 election, each major party appears to have been reluctant to field candidates in its opponent's safe districts. Indeed, although candidates from both major parties were eligible for full CEP funding in *every* district,[16] there were

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[15] Again, we do not rule out the possibility of reaching a contrary conclusion "in some future case, upon an appropriate factual demonstration." *Buckley*, 424 U.S. at 97 n.131.

[16] That is assuming that the candidate could meet the other eligibility criteria, such as collecting the required number of qualifying contributions.

72 General Assembly districts (out of a total of 187) in which one major party declined to field a candidate. *Green Party II*, 648 F. Supp. 2d at 324. The statewide qualification criteria can hardly be said to harm the political opportunity of minor-party candidates in safe districts if the major parties are not taking advantage of the statewide eligibility criteria to field publically financed candidates in those districts.

It is not at all certain, moreover, that providing public funds to a second major-party candidate will in any way affect the minor-party candidate's success at the polls. It may be that minor-party candidates have a core group of supporters that cannot be convinced to vote for a major-party candidate no matter how much money the major-party candidate spends.

It is also possible that the statewide eligibility criteria could actually *increase* the political opportunity of some minor-party candidates. Consider a safe Democratic district, such as the district encompassing New Haven. Funding a Republican challenger in that district may force the Democratic candidate to moderate her views and campaign closer to the "center" of the ideological spectrum. That could cause voters on the far "left" of the ideological spectrum to become disenchanted with the Democratic candidate and switch their votes to the Green Party candidate. There are, therefore, some situations in which providing CEP funding to a second major-party candidate may actually *help* a minor-party candidate at the polls.

Indeed, it is possible that the CEP's statewide eligibility criteria could *dramatically* improve the political opportunity of a minor party and thereby cause exactly the kind of political sea change that characterizes what *Buckley* called the "potential fluidity of American political life." 424 U.S. at 97 (quotation marks omitted). The only time in recent memory that a minor-party candidate has won an election in Connecticut was the election of Governor Lowell Weicker on the "A Connecticut Party" line in 1990. *See Green Party II*, 648 F. Supp. 2d at 325. If a minor-party candidate were able to match that achievement, then under the CEP his or her party would be deemed a "major" party and would, in the next election, be able to field candidates and receive full CEP funding in *every* legislative and statewide election.[17] Such an outcome could transform the once-minor, now-major party into a statewide political force, catalyzing the party's efforts to secure a permanent place as a third major party or, alternatively, providing the means for the party to supplant one of the two existing major parties.

What is more, in order to secure full funding in every legislative and statewide election under the CEP, a minor party need not field a *winning* candidate in the governor's race; the party need only field a candidate who earns twenty percent of the vote in that race. *See* Conn.

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[17] Again, that is assuming that the once-minor, now-major party's candidates could meet the CEP's other eligibility criteria.

Gen. Stat. § 9-372(5). Thus, the CEP's statewide qualification criteria provide a path to state-wide viability by which minor parties can bypass the difficult process of building political support in each individual area of the state. If a minor party can field a single gubernatorial candidate who earns twenty percent of the vote, the party will immediately have access to millions of public dollars to field candidates for each state office in the next election. In that situation, the CEP's statewide eligibility criteria operate not as a *burden* but as a *boon* to minor parties that are able to achieve a small but significant measure of statewide support.

Of course, our analysis in this section has been speculation. It is possible that under the CEP no minor-party candidate will ever achieve 20% of the vote in the gubernatorial election. As the District Court reasoned, moreover, it is possible that, with the benefit of full CEP funding, a second major-party candidate in a safe district will significantly *reduce* the political opportunity of the minor-party candidates in that district. But as we have explained, it is also possible that the statewide qualification criteria will increase the political opportunity of minor-party candidates, possibly in dramatic fashion. Thus, even if we were to ignore *Buckley*'s guidance and speculate about the potential effect of the CEP's statewide qualification criteria on minor-party candidates, our speculation would yield no clear prediction.

* * *

In sum, we are presented with insufficient evidence that the CEP's statewide qualification criteria have, in practice, operated to reduce the strength of minor-party candidates in safe districts below that attained by such candidates before the system was put in place. Even if we were to speculate about the criteria's effects in safe districts, we would reach inconclusive results—the criteria may harm minor-party candidates, they may have no effect at all on minor-party candidates, and they may even help minor-party candidates. It is even possible that the CEP's statewide qualification criteria will dramatically increase the political opportunity of a minor party who gains a small but significant percentage of the vote in a gubernatorial election.

As *Buckley* made clear, when the General Assembly designed the CEP, it was able to choose from a "range of formulations" of qualification criteria that "would protect the public fisc and not foster factionalism" and yet "also recognize the public interest in the fluidity of our political affairs." 424 U.S. at 103-04. Because the CEP's statewide qualification criteria require a "substantial" showing of public support in a gubernatorial election, yet also provide for a dramatic expansion of a minor-party's political opportunity if it achieves that showing—and because there is insufficient evidence that the statewide qualification criteria impose an unfair or unnecessary burden on minor-party candidates in safe districts—we "cannot say," on this record, that the General Assembly's choice of statewide qualification criteria "falls without the permissible range." *Id.* at 104. We therefore hold

that the District Court erred in concluding that the CEP's statewide qualification criteria unconstitutionally discriminate against minor parties and their candidates.

C. The Distribution Formulae

Plaintiffs also challenge the CEP's distribution formulae, which are the formulae that establish the amount of money that participating candidates receive under the CEP. As discussed above, the CEP provides, for general elections, full grant amounts of $85,000 to candidates for the Connecticut Senate and $25,000 to candidates for the Connecticut House. *See* Conn. Gen. Stat. § 9-705(e)(2), (f)(2). Those amounts are reduced in several circumstances, such as when a participating candidate is unopposed or is opposed by only a minor-party candidate. *See id.* § 9-705(j).

The District Court found that the CEP's grant amounts—and corresponding expenditure limits—for the Connecticut Senate and House races were "based on the average expenditures in the most competitive races." *Green Party II*, 648 F. Supp. 2d at 338. The District Court concluded that "[p]egging the CEP's grant levels to the most competitive races has burdened minor party candidates' political opportunity because, by providing major party candidates financing in amounts much higher than typical expenditure levels, it slants the political playing field in favor of major party candidates." *Id.*

It is true that the CEP's grant amounts and expenditure limits were based on historic

expenditures in *competitive* districts, but we disagree with the District Court's conclusion that the grant amounts and expenditure limits impose a burden on minor-party candidates that is unfair or unnecessary.

Again following *Buckley*, we examine whether there is *evidence* that the CEP's distribution formulae have operated to reduce the strength of minor parties below that attained before the CEP was put in place. *See* 424 U.S. at 98-99, 101; *see also* Count One, subsection II.A.2, *ante*. And once again, examining the record, we can find no such evidence. Based on data from the 2008 election, the one election in which the CEP was operative, minor-party candidates as a whole are arguably stronger—and certainly no weaker—under the CEP. *See* Count One, subsection II.A.3, *ante*. There is, therefore, insufficient evidence in this record to conclude that any part of the CEP—including the distribution formulae—imposes a burden on minor-party candidates that is unfair or unnecessary.

The District Court was troubled by the fact that the CEP's distribution formulae provided major-party candidates in uncompetitive districts with more money in public funds than they "were able to raise" on their own "prior to the enactment of the CEP." *Green Party II*, 648 F. Supp. 2d at 339. As a result, the District Court determined that the CEP grants amounted to a *subsidy* for major-party candidates, rather than merely a *substitution* for private funds, and the District Court concluded that the CEP's expenditure limits did not represent "a true expenditure

ceiling," at least for majorparty candidates in uncompetitive districts. *Id.* at 340. The problem with that reasoning is that it assumes that because a candidate *did not* raise a certain amount of money prior to the CEP that candidate was *unable* to raise that amount of money. It is far more likely that, before the CEP, candidates in safe districts—especially those favored to win—simply declined to raise every dollar possible, given that the outcome of the election was virtually certain. It is equally possible that donors were simply not interested in giving their money to a candidate who lacked any real competition at the polls. Indeed, if an election in a historically uncompetitive district were to become suddenly competitive—if, for example, a major-party incumbent were to face a strong challenge from a popular minor-party candidate—it is certainly possible that the major-party incumbent would be able to raise far more money than he or she had raised in the previous, *uncompetitive* elections in that district. We cannot conclude with any certainty, therefore, that the CEP's distribution formulae provide a substantial number of major-party candidates with more money then they were *"able"* to raise before the CEP was enacted.

Furthermore, in determining that the CEP "slants the political playing field in favor of major party candidates," *id.* at 338, it seems that the District Court was referring only to the "political playing field" in uncompetitive districts. After all, in competitive districts, the CEP's distribution formulae provide a level of funding that is comparable to historic levels. It is, instead, only

in *uncompetitive* districts that the CEP "provid[es] major party candidates financing in amounts much higher than typical expenditure levels." *Id.*

Yet if a district is uncompetitive, it is, by definition, a race in which minor-party candidates have no realistic chance of winning. Thus it is difficult to see how the political opportunity of a minor-party candidate in such a district could be unfairly or unnecessarily burdened by providing his or her opponent with additional funds. Put differently, if a district is truly *uncompetitive*, a minor-party candidate has no chance of winning, and he or she has very little political opportunity to be burdened.[18] If, however, a district is *competitive* in the sense that the minor-party candidate has some chance of winning, the CEP's funding levels are accurately calibrated.

In any event, the General Assembly's choice in setting the distribution formulae by reference to the historic expenditures in competitive districts strikes us as a reasonable approach. It is undoubtedly difficult to predict when a historically uncompetitive district will unexpectedly become competitive—when, for example, an incumbent will die or decline to seek

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[18] We acknowledge that winning an election is not the only reason that citizens choose to run for office, and we do not mean to diminish the important role that minor-party candidates play in espousing minority views and shaping public debate. There is, however, insufficient evidence in the record to show that minor-party candidates need public money to perform that role.

reelection; when a popular challenger will enter a race to unseat an incumbent; or when the demographic characteristics of a district will change, making it no longer "safe" for one party. If the CEP were to make more of an attempt to differentiate between districts—providing more money in competitive districts and less money in uncompetitive districts—the CEP would risk providing too little funding to candidates in historically uncompetitive districts that had only recently become competitive. That could undermine public confidence in the outcome of elections, as a candidate who loses in an unexpectedly competitive election could plausibly blame the insufficient CEP funding for his defeat. It could also discourage candidates from participating in the CEP. Rather than accept a diminished CEP grant (with the accompanying expenditure limit), candidates could prefer to avoid participation in the CEP and retain the flexibility of raising so-called *competitive* amounts of money, lest they be left without sufficient funds if a popular challenger unexpectedly enters the race.

* * *

In sum, we acknowledge that, by providing funding comparable to competitive races in every legislative race, the General Assembly painted with a broad brush. But because the alternative—making fine adjustments based on a district's historic or expected competitiveness—is fraught with danger, and because there is insufficient evidence that the CEP's distribution formulae have reduced the strength of minor parties below

that attained before the CEP became effective, we cannot conclude that the General Assembly violated the First or Fourteenth Amendments when it chose to treat every district as if it could, in any given election, involve a competitive race. We therefore hold that the District Court erred in concluding that the distribution formulae unconstitutionally discriminate against minor parties and their candidates.

COUNTS TWO & THREE: Whether the CEP's Trigger Provisions Violate the First Amendment

In Counts Two and Three, plaintiffs challenge the CEP's so-called "trigger provisions." As discussed above, the trigger provisions provide additional public funding to candidates when certain conditions are triggered. The trigger provisions include the "excess expenditure provision" (Count Two) and the "independent expenditure provision" (Count Three).

The District Court struck down the trigger provisions, concluding that they imposed a "substantial burden on the exercise of First Amendment rights" and that "the state ha[d] failed to advance a compelling state interest that would otherwise justify that burden." *Green Party II*, 648 F. Supp. 2d at 373. We agree with those conclusions and affirm the District Court's judgment in favor of plaintiffs on Counts Two and Three.

I. Plaintiffs' Standing to Challenge the Trigger Provisions

As a threshold matter, defendants argue that plaintiffs lack standing to challenge the trigger provisions. We agree with the District Court, however, that plaintiffs do have standing on Counts Two and Three. *See Green Party II*, 648 F. Supp. 2d at 369-70.

"To qualify for standing, a claimant must present an injury that is concrete, particularized, and actual or imminent; fairly traceable to the defendant's challenged behavior; and likely to be redressed by a favorable ruling." *Davis*, 128 S. Ct. at 2768 (citing *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560-61 (1992)). Defendants' primary claim is that plaintiffs have failed to allege an injury that is "concrete, particularized, and actual or imminent." *Id.*

With respect to the *excess expenditure* provision, plaintiffs have submitted very little evidence to suggest that any member of the Green Party or the Libertarian Party will ever raise enough money (or spend enough of his or her own money) to trigger the excess expenditure provisions. As discussed above, *see* Count One, section I, *ante*, *Davis* addressed the so-called "Millionaire's Amendment," which imposed a "penalty"—in the form of a disadvantageous "asymmetrical regulatory scheme"—on candidates for Congress who spent large amounts of their own money on their campaigns. *Id.* at 2766. *Davis* recognized that a potential candidate had standing to challenge the Millionaire's Amendment where the candidate had "declared

his candidacy and his intent to spend more than $350,000 of personal funds in the general election campaign." *Id.* at 2769. There, however, it was undisputed that the candidate's personal wealth was sufficient to enable him to spend more than $350,000 on his campaign. Here, by contrast, no plaintiff (or member of one of the plaintiff minor parties) has declared an intention to spend enough personal wealth to trigger the excess expenditure provision, and there is very little evidence to suggest that any minor-party candidate in Connecticut could plausibly raise enough money through private contributions to trigger the excess expenditure provision.

Nonetheless, the record shows that the Green Party does, on occasion, choose to endorse a major-party candidate for a particular office rather than run a candidate of its own (this is referred to as "cross-endorsement"). Insofar as the Green Party cross-endorses a major-party candidate who declines to participate in the CEP, the Green Party members may choose to make contributions to that candidate, and those contributions—combined with the candidate's other fundraising efforts—could cause the candidate to trigger the excess expenditure provision. Therefore, the existence of the excess expenditure provision could have the effect of chilling plaintiffs' contributions to cross-endorsed candidates. *See Green Party II*, 648 F. Supp. 2d at 368-69. We conclude that this injury is sufficiently "concrete, particularized, and . . . imminent" to provide plaintiffs with standing to assert Count Two.

The analysis is similar with respect to the *independent expenditure* provision. If the Green Party chooses to cross-endorse a major-party candidate, any independent expenditures made by the Green Party advocating for the defeat of the candidate's opponent could trigger the independent expenditure provision. We conclude, therefore, that the potential chilling effect on plaintiffs' independent expenditures, *see id.*, is sufficient to provide plaintiffs with standing to assert Count Three.

II. The Merits of Plaintiffs' Challenge to the Trigger Provisions

Turning to the merits of plaintiffs' challenge, we agree with the District Court that the CEP's trigger provisions violate the First Amendment because they operate in a manner similar to the law that the Supreme Court struck down in *Davis v. Federal Election Commission*, 128 S. Ct. 2759 (2008).

Federal law establishes certain restrictions on financial contributions given to candidates for Congress. For example, "[c]ontributions from individual donors during a 2-year election cycle are subject to a cap, which is currently set at $2,300." *Davis*, 128 S. Ct. at 2765-66 (citing 2 U.S.C. § 441a(a)(1)(A), (c)). The so-called "Millionaire's Amendment" at issue in *Davis* eased some of those restrictions for candidates whose opponents have spent more than $350,000 of their (the opponents') own personal funds in an election.

Consider, for instance, a race for Congress between Candidate A and Candidate B. The Millionaire's Amendment would apply if Candidate A were to spend $350,000 or more of her own money on her campaign. The Amendment at that point would ease certain restrictions for Candidate B. Most notably, Candidate B would be allowed to accept contributions from individual donors at three times the ordinary "cap"—$6,900 instead of $2,300. The restrictions would not, however, be eased for Candidate A, who would still be limited to accepting contributions at the $2,300 limit.

Davis emphasized, as an initial matter, that the Supreme Court had upheld contribution limits on individual donors. *See* 128 S. Ct. at 2770 ("This Court has previously sustained the facial constitutionality of limits on discrete and aggregate individual contributions and on coordinated party expenditures." (citing *Buckley*, 424 U.S. at 23-35, 38, 46-47 & n.53; *Fed. Election Comm'n v. Colo. Republican Fed. Campaign Comm.*, 533 U.S. 431, 437, 465 (2001))). Thus *Davis* observed that if the Millionaire's Amendment had "simply raised the contribution limits for all candidates," the plaintiffs' challenge "would [have] plainly fail[ed]." *Id.*

But because the Millionaire's Amendment "raise[d] the [contribution] limits only for the non-self-financing candidate" (Candidate B in the example above), *Davis* held that the Amendment imposed "an unprecedented penalty on any candidate who robustly exercise[d]" his or her right, under the First Amendment, "to spend

personal funds for campaign speech." *Id.* at 2771. Accordingly, *Davis* determined that the Millionaire's Amendment created "a substantial burden on the exercise of the First Amendment right to use personal funds for campaign speech," and held that the Millionaire's Amendment could be upheld only if it was "justified by a compelling state interest." *Id.* at 2772 (quotation marks omitted). Applying that standard, *Davis* struck down the Millionaire's Amendment, concluding that the asserted government interest—"to level electoral opportunities"—was not "compelling." *Id.* at 2773-74 (quotation marks omitted).

The Supreme Court's analysis in *Davis* directly governs plaintiffs' challenge to the CEP's trigger provisions in Counts Two and Three.

A. The Excess Expenditure Provision

The similarity between the claim in *Davis* and the claims raised by plaintiffs in Counts Two and Three is clearest with respect to the CEP's excess expenditure provision. Consider a race for a state office in Connecticut between Candidate A and Candidate B. Candidate A intends to spend her own money on the race and has, as a result, elected *not* to participate in the CEP. Candidate B, however, decides to participate in the CEP. Candidate B proceeds to qualify for the CEP, and he receives a full grant of public money and becomes subject to the CEP's expenditure limit.

Under the excess expenditure provision, if Candidate A spends so much of her own money on the race that her expenditures exceed Candidate

B's expenditure limit, then Candidate B will receive additional public money to make up for the deficit. In other words, as Candidate A spends more and more of her own money above a certain threshold, Candidate B will receive more and more public money to compensate (up to *twice* the full CEP grant). That plainly causes Candidate A to "shoulder a special and potentially significant burden" if she chooses to exercise her First Amendment right to spend personal funds on her campaign, for Candidate A can only spend above the excess-expenditure threshold if she accepts that her opponent will receive additional public money. *Davis*, 128 S. Ct. at 2772. As a result, the excess expenditure provision imposes what can only be deemed a "penalty" on Candidate A's choice "to spend personal funds for campaign speech." *Davis*, 128 S. Ct. at 2771.

The "penalty" imposed by the excess expenditure provision is, to be sure, slightly different from the penalty imposed by the Millionaire's Amendment in *Davis*. We agree with the District Court, however, that insofar as the two penalties are different, the penalty at issue in this case is "more constitutionally objectionable." *Green Party II*, 648 F. Supp. 2d at 373.

In *Davis*, the "penalty" consisted of a "a new, asymmetrical regulatory scheme"—contribution restrictions were relaxed for the non-self-financed candidate. 128 S. Ct. at 2766. In *Davis*, therefore, there was some possibility that the non-self-financed candidate (Candidate B, above) would be unable to raise additional money under the relaxed restrictions.

Here, however, the "penalty" imposed by the excess expenditure provision consists of a "voucher" of public funds given directly to Candidate B. *See, e.g.*, Conn. Gen. Stat. § 9-713(a); *see also Green Party II*, 648 F. Supp. 2d at 373. The penalty imposed by the excess expenditure provision, therefore, is *harsher* than the penalty in *Davis*, as it leaves no doubt that Candidate B, the opponent of the self-financed candidate, will receive additional money.

Accordingly, the excess expenditure provision "imposes a substantial burden on the exercise of the First Amendment right to use personal funds for campaign speech." *Davis*, 128 S. Ct. at 2772. To be upheld under plaintiffs' First Amendment challenge, the provision must be "justified by a compelling state interest." *Id.* (quotation marks omitted).

Applying that standard, we agree with the District Court that Connecticut's asserted interest—"promot[ing] participation in the CEP"—is not compelling. *Green Party II*, 648 F. Supp. 2d at 373. *Davis* was clear that a "burden . . . on the expenditure of personal funds is not justified by any governmental interest in eliminating corruption or the perception of corruption." 128 S. Ct. at 2773. Since the CEP is justified by a governmental interest in eliminating corruption or the perception of corruption, pursuant to the Supreme Court's teaching in *Davis*, encouraging participation in the CEP does not justify the burden on First Amendment rights caused by the excess expenditure provision. Moreover, insofar as the

excess expenditure provision is the result of a desire "to level electoral opportunities," they are, under *Davis*, clearly unconstitutional. *Id.* at 2773 (quotation marks omitted).

Thus, we conclude, pursuant to *Davis*, that the CEP's excess expenditure provision violates the First Amendment. We therefore affirm the District Court's judgment for plaintiffs on Count Two.[19]

B. The Independent Expenditure Provision

The only difference between the independent expenditure provision and the excess expenditure provision is the fact that independent expenditure provision applies to individuals and organizations who are not themselves *candidates* in any race. We do not think that this difference carries any significance, as nothing in *Davis* suggests that the "right to spend personal funds for campaign speech" is limited to *candidates only*. *Id.* at 2771.

Consider again the race between Candidate A and Candidate B. If a resident of the district strongly favors the election of Candidate A—and strongly disfavors the election of Candidate B—

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[19] The Ninth Circuit has recently upheld 19 a "matching funds" provision of Arizona's public financing system that bears some similarity to the CEP's excess expenditure provision. *See McComish v. Bennett*, 605 F.3d 720 (9th Cir. 2010). We are not persuaded by the Ninth Circuit's opinion, which, we note, has been stayed by the Supreme Court pending a petition for a writ of certiorari. *See McComish v. Bennett*, No. 09A1163, 2010 WL 2265319 (U.S. June 8, 2010).

the resident may choose to spend his personal funds to advocate the defeat of Candidate B. Under the independent expenditure provision, however, if the amount of the resident's expenditure of personal funds—when combined with the amount of Candidate A's own expenditures—surpasses Candidate B's expenditure limit, the state will provide additional funding to Candidate B to make up for the supposed inequality.

In this way, the independent expenditure provision clearly acts as a "penalty" on the resident's choice "to spend personal funds for campaign speech." *Id.* at 2771; *see also Day v. Holahan*, 34 F.3d 1356, 1359-62 (8th Cir. 1994) (holding unconstitutional a similar law penalizing independent expenditures). As the resident spends more and more money advocating against the candidate he opposes, Candidate B, the state will give more and more money to that candidate.

Accordingly, like the excess expenditure provision, the independent expenditure provision "imposes a substantial burden on the exercise of the First Amendment right to use personal funds for campaign speech." *Davis*, 128 S. Ct. at 2772. To be upheld under plaintiffs' First Amendment challenge, the provisions must therefore be "justified by a compelling state interest." *Id.* (quotation marks omitted).

Applying that standard, we once again agree with the District Court that, under the principles enumerated by the Supreme Court in *Davis*, the state's asserted interests cannot justify the independent expenditure provision. *See Green*

Party II, 648 F. Supp. 2d at 373. As discussed in connection with the excess expenditure provision, neither an interest in "eliminating corruption or the perception of corruption" nor an interest in "level[ing] electoral opportunities" can justify a "burden . . . on the expenditure of personal funds." *Davis*, 128 S. Ct. at 2773-74 (quotation marks omitted). Nor can such a burden be justified by the state's asserted interest in "promot[ing] participation in the CEP," *Green Party II*, 648 F. Supp. 2d at 373, as that interest merely derives from Connecticut's interest in establishing the CEP—that is, the state's interest in encourage participation in the CEP derives from its interests in eliminating corruption or the perception of corruption.

Thus, we conclude that the CEP's independent expenditure provision violates the First Amendment as it is construed by the Supreme Court in *Davis*. We therefore affirm the District Court's judgment for plaintiffs on Count Three.

III. The Severability of the Trigger Provisions

Having determined that CEP's trigger provisions—that is, the excess expenditure provision and the independent expenditure provision—violate the First Amendment, we must determine whether the trigger provisions are severable from the CEP or whether the entire CEP must be struck down along with those provisions.

Defendants argue that the Connecticut General Assembly designed the CEP so that many of its individual provisions could be severed. Plaintiffs respond that one section of the larger CFRA suggests that the General Assembly intended the entire law to rise and fall together. That statute, which was recently amended, now reads in full:

> (a) If, during a period beginning on or after the forty-fifth day prior to any special election scheduled relative to any vacancy in the General Assembly and ending the day after such special election, a court of competent jurisdiction prohibits or limits, or continues to prohibit or limit, the expenditure of funds from the Citizens' Election Fund established in section 9-701 for grants or moneys for candidate committees authorized under sections 9-700 to 9-716, inclusive, for a period of seven days or more, (1) sections 1-100b, 9-700 to 9-716, inclusive, 9-750, 9-751 and 9-760 and section 49 of public act 05-5 of the October 25 special session shall be inoperative and have no effect with respect to any race of such special election that is the subject of such court order until the day after such special election, and (2) (A) the amendments made to the provisions of the sections of the general statutes pursuant to public act 05-5 of the October 25 special session shall be

inoperative until the day after such special election with respect to any such race, (B) the provisions of said sections of the general statutes, revision of 1958, revised to December 30, 2006, shall be effective until the day after such special election with respect to any such race, and (C) the provisions of subsections (g) to (j), inclusive, of section 9-612 shall not be implemented until the day after such special election with respect to any such race.

(b) Except as provided for in subsection (a) or (c) of this section, if, on or after April fifteenth of any year in which a state election is scheduled to occur, a court of competent jurisdiction prohibits or limits, or continues to prohibit or limit, the expenditure of funds from the Citizens' Election Fund established in section 9-701 for grants or moneys for candidate committees authorized under sections 9-700 to 9-716, inclusive, for a period of thirty days or more, (1) sections 1-100b, 9-700 to 9-716, inclusive, 9-750, 9-751 and 9-760 and section 49 of public act 05-5 of the October 25 special session shall be inoperative and have no effect with respect to any race that is the subject of such court order until December thirty-first of such year, and (2) (A) the amendments made to the

provisions of the sections of the general statutes pursuant to public act 05-5 of the October 25 special session shall be inoperative until December thirty-first of such year, (B) the provisions of said sections of the general statutes, revision of 1958, revised to December 30, 2006, shall be effective until December thirty-first of such year, and (C) the provisions of subsections (g) to (j), inclusive, of section 9-612 shall not be implemented until December thirty-first of such year. If, on the April fifteenth of the second year succeeding such original prohibition or limitation, any such prohibition or limitation is in effect, the provisions of subdivisions (1) and (2) of this section shall be implemented and remain in effect without the time limitation described in said subdivisions (1) and (2).

(c) If, during a year in which a state election is held, on or after the second Tuesday in August set aside as the day for a primary under section 9-423, a court of competent jurisdiction prohibits or limits the expenditure of funds from the Citizens' Election Fund established in section 9-701 for grants or moneys for candidate committees authorized under sections 9-700 to 9-716, inclusive, for a period of fifteen days, or if said Tuesday occurs during a period of fifteen days or more in

which period such a court continues to prohibit or limit such expenditures, then, after any such fifteen-day period, (1) sections 1-100b, 9-700 to 9-716, inclusive, 9-750, 9-751 and 9-760 and section 49 of public act 05-5 of the October 25 special session shall be inoperative and have no effect with respect to any race that is the subject of such court order until December thirty-first of such year, and (2) (A) the amendments made to the provisions of the sections of the general statutes pursuant to public act 05-5 of the October 25 special session shall be inoperative until December thirty-first of such year, (B) the provisions of said sections of the general statutes, revision of 1958, revised to December 30, 2006, shall be effective until December thirty-first of such year, and (C) the provisions of subsections (g) to (j), inclusive, of section 9-612 shall not be implemented until December thirty-first of such year. If, on the April fifteenth of the second year succeeding such original prohibition or limitation, any such prohibition or limitation is in effect, the provisions of subdivisions (1) and (2) of this section shall be implemented and remain in effect without the time limitation described in said subdivisions (1) and (2).

> (d) Any candidate who has received any funds pursuant to the provisions of sections 1-100b, 9-700 to 9-716, inclusive, 9-750, 9-751 and 9-760 and section 49 of public act 05-5 of the October 25 special session prior to any such prohibition or limitation taking effect may retain and expend such funds in accordance with said sections unless prohibited from doing so by the court.

Conn. Gen. Stat. § 9-717 (as amended by Public Act 10-2 on April 14, 2010).

Because the District Court struck down the entire CEP, it had no occasion to determine whether the trigger provisions were severable. We therefore remand to the District Court to consider the severability issue in the first instance. Because the meaning of § 9-717 is far from clear, the District Court should develop the record to determine how § 9-717 applies given our judgment for defendants on Count One and our judgment for plaintiffs on Counts Two and Three.

CONCLUSION

In summary, we hold as follows:

(1) When deciding whether a system of public financing for campaigns unconstitutionally discriminates against minor-party candidates, a court should first apply the version of "exacting scrutiny" set forth in *Buckley v. Valeo*, 424 U.S. 1, 95-96 (1976). The court should ask (a) whether the public financing system was enacted in

furtherance of a sufficiently important governmental interest, and (b) whether the system burdens the political opportunity of a party or candidate in a way that is unfair or unnecessary. *See id.* If the system survives under that version of the exacting scrutiny standard, the system should be upheld. If the system does not survive under that version of the exacting scrutiny standard, the court should finish the line of reasoning that *Buckley* left unresolved and determine whether a less searching standard applies.

(2) Assuming, for the sake of analysis, that the version of "exacting scrutiny" set forth in *Buckley* applies to plaintiffs' claim that Connecticut's Citizen Election Program (CEP) unconstitutionally discriminates against minor parties and their candidates, we hold that the Connecticut General Assembly enacted the CEP "in furtherance of sufficiently important governmental interests." 424 U.S. at 95-96. We also hold that there is insufficient evidence on this record to demonstrate that the CEP has "operat[ed] to reduce [the] strength" of minor-party candidates in Connecticut "below that attained without any public financing." *Id.* at 98-99. We conclude, as a result, that there is insufficient evidence to show that the CEP's qualification criteria and distribution formulae have "burdened the political opportunity" of minor-party candidates in a way that is "unfair[ ]" or "unnecessar[y]." *Id.* at 95-96. Accordingly, we reverse the judgment of the District Court on Count One and enter judgment on that Count for defendants.

(3) Plaintiffs have standing to challenge the CEP's "trigger provisions"—which provide additional public funding to candidates when certain conditions are triggered—because those provisions have a potential chilling effect on (a) plaintiffs' practice of providing direct contributions to cross-endorsed, major-party candidates and (b) plaintiffs' practice of making independent expenditures in support of cross-endorsed, major-party candidates.

(4) The CEP's trigger provisions impose a "penalty" on the right of candidates and other individuals and organizations "to spend personal funds for campaign speech." *Davis v. Fed. Election Comm'n*, 128 S. Ct. 2759, 2771 (2008). As a result, the trigger provisions violate the First Amendment unless they are "justified by a compelling state interest." *Id.* at 2772 (quotation marks omitted). In the case before us, the state's asserted interests—promoting participation in the CEP and eliminating corruption or the perception of corruption—are not sufficiently "compelling" to justify a burden on the right to spend personal funds for campaign speech. *See id.* at 2773-74. Accordingly, the trigger provisions violate the First Amendment, and we affirm the District Court's judgment for plaintiffs on Counts Two and Three.

(5) We remand the cause to the District Court to determine, in the first instance, whether the trigger provisions are severable from the remainder of the CEP and the CFRA. To that end, the District Court should develop the record to determine the effect of Conn. Gen. Stat. § 9-717,

given our judgment for defendants on Count One and our judgment for plaintiffs on Counts Two and Three. The District Court should also conduct any other proceedings, consistent with this opinion, that may be appropriate or necessary.

(6) The District Court permanently enjoined defendants from enforcing the CEP, but with the consent of all parties, the District Court stayed that injunction pending this appeal. *See Green Party of Conn. v. Garfield*, No. 3:06-cv-01030, Docket Entry No. 399 (D. Conn. Sept. 29, 2009). We now vacate the permanent injunction entered by the District Court and instruct the Court to reconsider the scope of the injunctive relief necessary in this action in light of our holdings in this opinion and the District Court's resolution of the severability issue on remand.

* * *

The September 2, 2009 judgment of the District Court on Counts One, Two, and Three of this action is **AFFIRMED** in part (with respect to Counts Two and Three), **REVERSED** in part (with respect to Count One), and the cause is **REMANDED** to the District Court for further proceedings in accordance with the instructions set forth above.

Recognizing that an election has been scheduled for November 2, 2010, and given the importance of this case to ongoing campaigns for state office, we request that the District Court act expeditiously in considering the issues presented for decision on remand.

Green Party of
Connecticut
v. Garfield,
No. 09-3760

KEARSE, Circuit Judge, dissenting in part:

I join so much of the majority's opinion as affirms the district court's judgment as to Counts Two and Three; but I respectfully dissent from the reversal with respect to Count One, which challenged so much of the Citizens' Election Program ("CEP") as provides for the funding of candidates for the Connecticut State legislature on the basis of their parties' performance in the prior gubernatorial election.

Under the CEP, a candidate for the legislature whose party garnered less than 20% of the vote in the prior gubernatorial election is not eligible to receive the maximum level of public funding for the legislative election if that party failed to win (and failed to collect petition signatures equaling) at least 20% of the votes cast in the prior election for that legislative seat. In contrast, a candidate for the same legislative seat whose party similarly failed to win at least 20% of the votes in the prior election for that legislative seat is eligible to receive the maximum level of public funding for the legislative election if his or her party won at least 20% of the vote in the prior gubernatorial election. With respect to public support in such a legislative district, as neither candidate's party has received 20% of the vote the candidates are similarly situated. Yet under the

CEP one candidate would receive a far larger grant of public funding than the other.

A candidate's First Amendment rights are burdened when the state provides funds only, or in a greater amount, to his or her opponent, thereby increasing the opponent's relative position. See Davis v. FEC, 128 S. Ct. 2759 (2008). In considering

> a challenge to a state election law [a court] must weigh "the character and magnitude of the asserted injury to the rights protected by the First and Fourteenth Amendments that the plaintiff seeks to vindicate" against "the precise interests put forward by its rule," taking into consideration "the extent to which those interests make it necessary to burden the plaintiff's rights."

Burdick v. Takushi, 504 U.S. 428, 434 (1992) (quoting Anderson v. Celebrezze, 460 U.S. 780, 789 (1983) (emphasis ours)). The State of Connecticut has an obviously significant and important interest in preventing corruption or the appearance of corruption. But no one has explained why the measurement of candidates' eligibility for public funds in a local election for a legislative seat by reference to their parties' prior vote-garnering performance in a different election, i.e., the previous statewide race for governor, is necessary.

The majority's reliance on Buckley v. Valeo, 424 U.S. 1, 85-108 (1976), seems to me misplaced

since that case involved only campaigns for the same office, the presidency; thus, only elections that were comparable provided the measure for determining whether and to what extent the various parties in Buckley were entitled to public funds. Shortly after the Supreme Court decided Buckley, it decided Bang v. Noreen, 436 U.S. 941 (1978), in which it summarily affirmed Bang v. Chase, 442 F. Supp. 758 (D. Minn. 1977) (three-judge court), which had struck down a Minnesota statute giving public funds to local legislative candidates based on the public support of their parties statewide, because "the aggregate political party preferences expressed by all the state taxpayers in Minnesota have no rational relation to the support for particular parties or for particular candidates within legislative districts," 442 F. Supp. at 768. Although "the precedential effect of a summary affirmance extends no further than the precise issues presented and necessarily decided by those actions," Anderson, 460 U.S. at 784 n.5 (internal quotation marks omitted), such a decision does endorse what was "necessarily decided," id. (internal quotation marks omitted). In Bang, the district court held that giving public funds to local legislative candidates based on the public support of their parties statewide "invidiously discriminates between candidates of different political parties and abridges the First Amendment right of political association." 442 F. Supp. at 768. I see no reason to believe that the Supreme Court's summary affirmance did not endorse this holding, which seems applicable to the Connecticut scheme.

In sum, I would affirm the district court's ruling on Count One, that the CEP grant-eligibility requirements based on mismatched election races are not necessary to achieve the State's goals.

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

GREEN PARTY OF CONNECTICUT, ET AL.,
Plaintiffs,
v.
JEFFREY GARFIELD, ET AL.,
Defendants.

CIVIL ACTION NO.
3:06cv1030 (SRU)

MEMORANDUM OF DECISION and ORDER

In 2005, Connecticut enacted the Campaign Finance Reform Act ("CFRA") in response to public outcry over several high-profile corruption scandals involving state elected officials, including former Governor John Rowland. One aspect of the CFRA is the Citizens' Election Program ("CEP"), a voluntary public financing scheme for candidates seeking election to the offices of Governor, Lieutenant Governor, Attorney General, State Comptroller, Secretary of the State, State Treasurer, and candidates for state senate and the state house of representative.

The plaintiffs, a group of self-described "minor" parties and minor party candidates for statewide and state legislative office, challenge the CEP on the ground that its minor party candidate qualifying criteria and distribution formulae place an unconstitutional,

discriminatory burden on their fundamental, First Amendment-protected right to political opportunity by enhancing the relative strength of major party candidates who can more easily qualify for public funding. The defendants are the state officials responsible for operating and enforcing the CEP and a group of intervenor-defendants who support the principles underlying the CEP (collectively, "the state"). The state defends the CEP on the ground that it does not reduce minor party candidates' absolute political strength below what they would have otherwise been able to achieve in the absence of the CEP. The state further contends that any burden the CEP may impose is justified by compelling state interests in protecting the public fisc against funding hopeless candidacies, minimizing incentives that would promote factionalism and splintered parties, and encouraging high participation rates in the CEP by viable candidates.

On December 9-10, 2008 and March 11-12, 2009, the parties tried this case to the court. After considering all of the evidence and the parties' arguments, I make the following findings of fact and conclusions of law pursuant to Rule 52 of the Federal Rules of Civil Procedure.

Good motives underlie the enactment of the CEP, namely, to combat actual and perceived corruption arising out of large contributions from private sources and to encourage candidates to spend more time engaged with voters and each other on the pertinent issues, rather than

spending time fundraising. Indeed, the state should be praised for its groundbreaking efforts to increase the public's confidence in state lawmakers and to promote the integrity of the electoral system as a whole. Spurred on by a regrettable legacy of corruption that has pervaded all levels of elected office in recent decades, Connecticut is now commendably at the forefront of a nationwide movement to increase transparency in the political process.

In pursuing its campaign finance reforms efforts, however, the state must remain mindful that it is operating in the arena of core, fundamental constitutional rights that demand narrow and carefully tailored regulations. For the reasons explained below, therefore, I conclude that the CEP imposes an unconstitutional, discriminatory burden on minor party candidates' First Amendment-protected right to political opportunity by enhancing participating major party candidates' relative strength beyond their past ability to raise contributions and campaign, without imposing any countervailing disadvantage to participating in the public funding scheme.

First, the CEP provides public funding to participating candidates at windfall levels, well beyond historic expenditure levels in most races, thus creating merely illusory expenditure "limits" for participating candidates. The CEP grant levels are also well beyond what most candidates have previously been able to raise from private fundraising sources. Accordingly, the CEP acts as

an impermissible subsidy for major party candidates, rather than a permissible substitute for those traditional sources of funding.

Second, the use of a statewide proxy artificially enhances the political strength of many major party General Assembly candidates by disregarding the level of public support for those candidates within their actual legislative district; in the past three election cycles, in nearly half of the legislative districts, one of the major parties has either abandoned the district or its candidate has won less than 20% of the vote, in other words, losing in landslide fashion. By using a statewide proxy, the CEP permits any major party candidate to become eligible for full public financing without first requiring those candidates to demonstrate the same significant modicum of public support that minor candidates must establish before becoming similarly eligible for full funding. In this way, the CEP distorts the strength of many major party candidates who have otherwise failed to establish any degree of success in a particular district by removing the inhibiting factors that previously deterred candidates from running in that district, such as lack of public support or inability to raise the necessary campaign funding to be competitive.

Third, the CEP's additional qualifying criteria for minor party candidates are so difficult to achieve that the vast majority of minor party candidates will never become eligible to receive public funding at even reduced levels. For instance, the legislature chose to set the

necessary thresholds for the prior success requirement at vote levels that very few minor party candidates have historically attained, thus ensuring most minor party candidates would need to qualify for the CEP under the petitioning requirement. In turn, the evidence in the record establishes the CEP's petitioning requirement thresholds are nearly impossible to achieve given the minor parties' general lack of organizational structure, the great expense that a petition drive requires in the absence of a sufficient volunteer network, the CEP's prohibition on hiring professional canvassing services "on spec," and the general difficulties faced by unknown minor party candidates who cannot benefit from either name recognition or party identification when seeking the signatures of registered voters of that district.

Finally, the CEP's distribution formulae discourage minor party candidates from participating, or even attempting to participate in the CEP, by releasing significant additional funding to the participating major party opponent once the minor party candidate reaches a minimal level of fundraising and by hamstringing the minor party candidate's ability to collect additional contributions at levels that would permit him or her to close the fundraising gap. Given those difficulties imposed by the statute, minor party candidates face great incentives to forgo public financing, along with its associated transformative benefits, and seek funding from private sources only.

Having determined that the CEP burdens the political opportunity of minor party candidates, I further conclude that the CEP is not narrowly tailored to achieving the state's compelling interests because the state has failed to demonstrate how the public fisc is actually protected by imposing stringent qualifying criteria on minor party candidates, while permitting equally hopeless major party candidates to qualify under significantly less onerous qualifying criteria, in vastly greater numbers and at windfall funding levels. Furthermore, there is significant evidence in the record to suggest that much lower thresholds for the additional qualifying criteria – or indeed, a party-neutral scheme – would serve the state's compelling interests equally well without imposing an unconstitutional burden on minor party candidates.

I further conclude that the CEP's excess expenditure and independent expenditure provisions also unconstitutionally burden the plaintiffs' exercise of their First Amendment rights. In a manner analogous to the law struck down by the Supreme Court in *Davis v. FEC*, __ U.S. __, 128 S. Ct. 2759 (2008), the expenditure triggers in the CEP require non-participating minor party candidates and minor parties considering making independent expenditures to choose between limiting their political speech and providing bonus public funding grants to candidates they oppose. Again, the state has failed to show that these trigger provisions are

supported by interests sufficiently compelling to withstand strict scrutiny.

As explained in more detail below, I conclude that the CEP represents an unconstitutional, discriminatory burden on the plaintiffs' First Amendment-protected right to political opportunity, in violation of the Fourteenth Amendment's Equal Protection Clause, because the state has not established how the CEP is narrowly tailored to further compelling state interests, particularly when there were less restrictive alternatives for achieving those interests available to the state at the time the CFRA was passed and subsequently amended. Accordingly, I conclude that the operation and enforcement of the CEP must be permanently enjoined.

I. Factual Background

A. The Parties

1. *The Plaintiffs*

a. The Green Party of Connecticut

The Green Party of Connecticut ("Green Party") was founded in 1996 and has since fielded candidates for federal, state, and local office. Pl. Ex. A-1, DeRosa Decl. ¶11. The Green party is considered a "non-major" party or "minor" party in the State of Connecticut; in 2002, there were 2,142 voters registered in the Green Party, with 100-150 people actively involved in party operations at the state and local levels. Sevigny Aff. ¶ 23. According to the most recent voter

registration data submitted to the court, there are 1,872 registered members of the Green Party statewide, comprising less than 1% of registered voters in Connecticut. March 26, 2009 Notice of Intervenor-Defs.' and Defs.' Submission of Supp. Data Ex. 2, Party Registration, Table 3.

Since 2000, the Green Party has fielded a handful of candidates for state representative and state senator in each election cycle.[1] Pl. Ex. A-1, DeRosa Decl. ¶ 11. Several of those candidates received between 10% and 20% of the vote, with two candidates receiving in excess of 20% of the vote. Specifically, in 2000, Mike DeRosa received 10.7% of the vote in the 1st Senate District; Thomas Ethier received 11.8% of the vote in the 65th House District; and Paul Bassler received 10.8% of the vote in the 142nd House District. Pl. Ex. 30, OLR Research Report, Past Performance of Petitioning and Minor Party Candidates in Connecticut, at 6. In 2002, John Battista received 30.9% of the vote in the 67th House District and Simone Mason received 18.4% of the vote in the 91st House District. *Id.* at 8. In 2004, Mike

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[1] In 2000, the Green Party fielded two candidates for state senate and four candidates for state house. DeRosa Decl. ¶ 11. In 2002, it fielded three candidates each for the state house and state senate. *Id.* In 2004, the Green Party ran four candidates for state senate and two candidates for state house. Appendices A & B. In 2006, the Party had three candidates for state senate and one candidate for state house. Appendices C & D. In the most recent election held November 4, 2008, the Green Party ran three candidates for state senate and two candidates for state representative. Appendices E & F.

DeRosa received 11.4% of the vote in the 1st Senate District; Joyce Chen received 27.28% of the vote in the 93rd House District; and Nancy Burton received 17.9% of the vote in the 135th House District. Appendices A & B. In 2006, Nancy Burton won 11.7% of the vote in the 135th House District.[2]

Appendix D. In 2008, Remy Chevalier received 18% of the vote in the 135th House District.[3] Appendix F.

In 2006, the Green Party qualified its first full slate of candidates for statewide office, including Cliff Thornton for Governor, Jean de Smet for Lieutenant Governor, Nancy Burton for Attorney General, Mike DeRosa for Secretary of the State, David Bue for State Treasurer, and Colin Bennett for State Comptroller. Pl. Ex. A-1, DeRosa Decl. ¶ 11. The Green Party has not yet fielded a successful candidate for any statewide office or the General Assembly. It intends to run a

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[2] The other Green Party General Assembly candidates in 2006 won less than 10% of the vote in their respective districts. Specifically, Robert Pandolfo won 5.9% of the vote in the 1st Senate District, Colin Bennett won 2% of the vote in the 33rd Senate District, and David Bedell won 1.2% of the vote in the 36th Senate District. Appendix C.

[3] The other Green Party General Assembly candidates in 2008 won less than 10% of the vote in their respective districts. Specifically, Mike DeRosa won 4.6% of the vote in the 1st Senate District, Colin Bennet won 3.4% of the vote in the 33rd Senate District, Zachary Chaves won 2.2% in the 36th Senate District, and Kenric Hanson won 8.5% of the vote in the 39th House District. Appendices E & F.

full slate of candidates for statewide election in 2010. *Id.* ¶ 12.

According to former and current Green Party leaders, the Party does not have a strong or comprehensive internal organization. For instance, the party does not have any paid staff members or a headquarters. Youn Decl. Ex. 3, Ferrucci Dep. at 22-23. In 2006, it hired one paid campaign manager for its gubernatorial campaign, who also managed the party's collection of part-time volunteers. Youn Decl. Ex. 18, Thornton Dep. at 51-54; Youn Decl. Ex. 5, Krayeske Dep. at 58; Migally Decl. Ex. 1, DeRosa Dep. at 45. During his tenure as Co-Chairman of the Green Party, Tom Sevigny stated that it was often difficult to reach the necessary quorum for the monthly statewide meetings because local chapters would not send representatives with the necessary frequency. Sevigny Aff. ¶ 25. Sevigny also explained that, although the Green Party's practice is to formally approve any candidate who runs for state office on its platform, the vote to endorse a candidate has often been "perfunctory" and that any party member who volunteered to run is likely to be approved; the Green Party has never held a primary for state office. *Id.* ¶ 35. *See also* Youn Decl. Ex. 18, Thornton Dep. at 104; Migally Decl. Ex. 1, DeRosa Dep. at 44-45.

Finally, the Green Party has historically not had sufficient funds to supply a steady stream of monetary support to its candidates. Youn Decl. Ex. 3, Ferrucci Dep. at 58. Individual Green Party candidates for the General Assembly have

typically run as "exempt," meaning they have not raised or spent in excess of $1,000 in support of their campaigns.[4] According to the website, www.followthemoney.org, which both parties have relied on to report campaign receipts, eight Green Party candidates have raised over $1,000 since 2002. In 2002, Mike DeRosa (1st Senate District) raised $4,998, Tom Sevigny (8th Senate District) raised $2,598, Penny Teal (18th Senate District) raised $3,211, John Tattista (67th House District) raised $36,935, Peter Magistri (60th House District) raised $3,273, and Simone Mason (91st House District) raised $8,187. In 2004, Nancy Burton raised $6,325 in the 135th House District and Joyce Chen raised $10,886 in the 93rd House District. In 2006, all Green party candidates ran as exempt. In 2008, only two candidates ran as non-exempt and those candidates failed to raise over $1,000.

b. S. Michael DeRosa

S. Michael "Mike" DeRosa joined the Green Party in 1996 and is presently serving as one of the Party's three Connecticut co-chairmen. Pl. Ex. A-1, DeRosa Decl. at ¶¶ 3-4. DeRosa has run for state senate in the 1st District on the Green Party platform four times (2000, 2002, 2004, and 2008)

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[4] Candidates who certify with the State Elections Enforcement Commission ("SEEC") that they will not receive or expend funds in excess of $1,000 are not required to form a candidate committee and are, therefore, exempt from submitting the otherwise obligatory financial disclosure forms.

and was the Green Party's candidate for Secretary of the State in 2006. *Id.* at 13-14. He received over 10% of the vote in the 2000 and 2004 elections; in 2008 he won 4.6% of the vote. In his campaign for Secretary of the State in 2006, DeRosa received 1.7% of the vote. Connecticut Secretary of the State, 2006 Election Results, *available at* http://www.ct.gov/sots/cwp/view.asp?a=3188&q=392584 (last visited August 26, 2009).

In the 2008 election, because the 2006 Green Party candidate in the 1st Senate District did not receive over 10% of the vote, DeRosa was not eligible to qualify for partial CEP funding under the prior-success provision. Pl. Ex. A-9, DeRosa Supp. Decl. ¶ 2. He also missed the deadline for submitting signatures to qualify for CEP funding under the petitioning provision, and therefore, he received no CEP funding in 2008. *Id.*

In the 2008 election for state senate in the 1st Disrict, DeRosa faced competition from both major parties and ultimately received 4.6% of the vote, or 1,109 of the 24,034 votes cast. *Id.* ¶ 7. DeRosa's Democratic competitor, incumbent John Fonfara, received 78.6% of the vote[5] and his Republican competitor, Barbara Ruhe received 16.8% of the vote. *Id.* As a Democrat, Fonfara qualified to receive CEP funding. Because he drew a primary challenger, Fonfara received an

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[5] Fonfara was cross-endorsed by the Working Family Parties. Pl. Ex. A-1, DeRosa Supp. Decl. ¶ 7.

initial grant of $75,000 for the primary. *Id.* ¶ 5. He received an additional $85,000 grant because he drew a Republican challenger in the general election. *Id.* ¶ 6. Ruhe, the Republican candidate, was unable to collect enough qualifying contributions and thus failed to qualify for CEP funding. *Id.* ¶ 10.

DeRosa intends to run as the Green Party candidate for Secretary of the State in 2010. DeRosa Decl. ¶ 14. He intends to attempt to qualify for public financing under the CEP. *Id.* ¶ 15. Because he only received 1.7% of the vote in 2006, he must do so by collecting signatures as a petitioning candidate. *Id.* ¶ 19.

c. The Libertarian Party of Connecticut

The Libertarian Party of Connecticut (the "Libertarian Party") is another minor party with a statewide presence, consistently running candidates for federal, statewide, and state legislative office since 2000. Pl. Ex. A-5, Rule Decl. ¶¶ 4-6. As of March 2009, there were 998 registered Libertarians, representing less than 1% of registered Connecticut voters. March 26, 2009 Notice of Intervenor-Defs.' and Defs.' Submission of Supp. Data Ex. 2, Party Registration, Table 3. According to the Libertarian Party's treasurer, Andrew Rule, the Party has approximately 45 to 50 dues-paying members. Youn Decl. Ex. 12, Rule Dep. at 90. The Libertarian Party is ideologically opposed to any public financing of campaigns and believes that

elections should be left to the marketplace. Pl. Ex. A-5, Rule Decl. ¶ 8.

In 2000, the Libertarian Party ran three candidates for state senate and twelve candidates for state house. Pl. Ex. 30, OLR Research Report, Past Performance of Petitioning and Minor Party Candidates in Connecticut, at 6. In 2002, the Libertarian Party ran several candidates for statewide office, including Darlene Nicholas for Secretary of the State, Ken Mosher for State Treasurer, and Leonard Rasch for State Comptroller. Pl. Ex. A-5, Rule Decl. ¶ 4. That year the Party also ran two candidates for state house. *Id.* In 2004, the Libertarian Party had one candidate for state senate and four candidates for state house. Appendices A & B. In 2006, the party fielded several candidates for statewide office: Ken Mosher for Secretary of the State, Steven Edelman for State Treasurer, and Richard Connelly, Jr. for State Comptroller, plus two candidates for state house. Pl. Ex. A-5, Rule Decl. ¶ 4. In 2008, the Libertarian Party ran one candidate for state senate. Appendix E. In 2010, the Libertarian Party plans to run a full slate of candidates for statewide office for the first time. Pl. Ex. A-5, Rule Decl. ¶ 7. To qualify its slate for the statewide ballot, the Libertarian Party will have to meet the state's ballot access petitioning requirement by collecting 7,500 valid signatures. *Id.*

The Libertarian Party has had candidates for the General Assembly receive over 10% of the vote. In 2000, Michael Costanza received 26.1% of

the vote in the 43rd House District and William Rood received 15.9% of the vote in the 49th House District. Pl. Ex. 30, OLR Research Report, Past Performance of Petitioning and Minor Party Candidates in Connecticut, at 6. Also in 2000, one Libertarian Party candidate for state senate and three more candidates for state house received over 5% of the vote.[6] *Id.* In 2004, one Libertarian candidate for state house received over 5% of the vote.[7] Appendix B. In 2006, Arlene Dunlop in the 82nd House District won 7.4% of the vote; there were no Libertarian candidates for state senate. Appendix D. In 2008, the only Libertarian candidate for General Assembly – Marc Guttman – won 1.6% of the vote in the 20th Senate District. Appendix E.

In 2008, Guttman claimed exempt status, meaning no Libertarian attempted to qualify for the CEP during 2008 election cycle. Since 2002, all but one Libertarian candidate for the General Assembly has claimed exempt status. In 2002, Abelardo Arias, the Libertarian candidate for the

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[6] Richard Antico received 7.2% of the vote in the 32nd Senate District. Pl. Ex. 30, OLR Research Report, Past Performance of Petitioning and Minor Party Candidates in Connecticut, at 6. Vincent Marotta received 5.9% of the vote in the 33rd House District, Donald Allen Nicholas received 8.7% of the vote in the 39th House District, and Sandra Cote received 6.4% of the vote in the 44th House District. *Id.*

[7] Arline Dunlop received 6.8% of the vote in the 82nd House District. Appendix B.

91st House District, raised $568. http://www.followthemoney.org/database/StateGIance/state_candidates.phtml?s=CT&y=2002&f=H&so=P&p=3#sorttable (last visited August 26, 2009).

The Libertarian Party has no paid staff members and does not maintain an office. Youn Decl. Ex. 12, Rule Dep. at 113. It no longer has a telephone number, but the Party does maintain a website and a Post Office box. *Id.* Historically, the Party has not provided monetary support for its statewide or state legislative candidates and, according to its by-laws, intends for candidates to provide their own campaign financing. Youn Decl. Ex. 12, Rule Dep. at 114-16; Youn Decl. Ex. 13, Libertarian Party By-laws, Art. 3, § 8. The Libertarian Party does not generally cross-endorse candidates. Youn Decl. Ex. 12, Rule Dep. at 101-05.

2. *The Defendants*

a. Jeffrey Garfield

Jeffrey Garfield is the Executive Director and General Counsel of the State Elections Enforcement Commission ("SEEC") and is sued solely in his official capacity.[8] The SEEC is the

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[8] In June 2009, Garfield announced his retirement as SEEC Executive Director and General Counsel, a position he has held since 1979. SEEC Press Release, State Elections Enforcement Commission Long Time Executive Director to Retire, *available at* http://www.ct.gov/seec/cwp/view.asp?a=3556&Q=441884 (last visited August 26, 2009). Garfield has not yet stepped

state agency charged with the administration and enforcement of the CEP and has the authority to levy civil penalties for violations of the Act. *See* Conn. Gen. Stat. §§ 9-7b, 9-601, 9-701, 9-713, 9-714.

b. Richard Blumenthal

Richard Blumenthal is the Attorney General of the State of Connecticut and is sued solely in his official capacity. As Attorney General, Blumenthal has the statutory authority to enforce the orders of the SEEC. Conn. Gen. Stat. § 9-7b.

3. *Intervenor-Defendants*

Audrey Blondin, Kim Hynes, and Tom Sevigny, (collectively, the "Candidate-Intervernors"), Connecticut Common Cause ("Common Cause"), and Connecticut Citizens Action Group ("CCAG") successfully intervened in this action as defendants on February 28, 2007 in support of the CEP.

a. Candidate-Intervenors

The Candidate-Intervenors are former candidates for state office who plan to run again in the future. Blondin was a Democratic

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down, however, stating he will remain with the SEEC for at least 90 days to assist in its search for his successor. *Id.* For purposes of this decision, therefore, he remains a properly named defendant.

candidate who ran for Secretary of the State in 2004 and who states she will likely run for Secretary of the State or Governor in 2010. Hynes was a Democratic candidate who ran for State Representative for the 149th District in 2004 and who, at the time she intervened in this case, stated she would likely run for the same office again in 2008. Sevigny was a Green Party candidate who ran for State Representative for the 8th District in 2004 and who, at the time he intervened in this case, stated he would likely run for the same office again in 2008. The Candidate-Intervenors support the CEP as a means for increasing access to public office.

b. Common Cause & CCAG

Common Cause is a non-profit citizens' lobbying organization committed to promoting and maintaining democracy in Connecticut and has approximately 7,000 members in the state. CCAG is a non-profit organization dedicated to social, economic, and environmental justice with approximately 30,000 members in Connecticut. These groups support the CEP because they believe it reduces the influence of special interest money on elections and creates opportunities for individuals who lack independent wealth to run for office.

B. Events Leading to the Passage of the CFRA

Over the past decade, Connecticut has been rocked by several widely publicized corruption scandals involving high-ranking state and local officials, including, *inter alia*, the resignation and conviction of Governor John Rowland for improperly accepting valuable gifts and services in exchange for lucrative state contracts. As a result of those scandals, in an effort to restore citizens' faith in state government, the General Assembly passed the CFRA in late 2005. The CFRA is comprised of two principal components: (1) the CEP, the focus of the present decision, which creates a voluntary scheme for the public financing of campaigns for statewide and state legislative office, and (2) a ban on campaign contributions from, and solicited by, certain lobbyists, state contractors, and their immediate family members. I recently decided the constitutional challenge to the latter component in *Green Party of Connecticut v. Garfield ("Green Party II")*, 590 F. Supp. 2d 288, 294 (D. Conn. 2008) (appeal pending), holding that the bans – as amended through December 19, 2008 – did not violate the plaintiffs' rights protected under the First Amendment.

1. *Connecticut's Corruption Scandals*

On June 21, 2004, John Rowland resigned as Governor following accusations that he had improperly accepted over $100,000 dollars worth of gifts and services from state contractors, including free or reduced vacations in Florida and Vermont, construction work on his Connecticut lake cottage, and free private jet flights to Las

Vegas and Philadelphia, in exchange for facilitating the award of several state contracts. Feinberg Decl. Ex. 3. Rowland subsequently pled guilty to federal criminal charges, including federal income tax evasion and conspiracy to defraud the state and its citizens of the honest services of its Governor. Feinberg Decl. Exs. 2 & 4. In March 2005, Rowland was sentenced to a term of imprisonment of one year and a day and ordered to pay $82,000 in fines. Feinberg Decl. Ex. 4. Rowland's chief of staff, Peter Ellef, his deputy chief of staff, Lawrence Alibozek, and several state contractors, including William Tomasso and the Tunxis Management Company, also pled guilty to federal charges stemming from their roles in that corruption scandal. Feinberg Decl. Exs. 5-10.

The Rowland scandal was but one of the many corruption scandals involving elected officials in state and local government that helped earn the state the nickname "Corrupticut." *See, e.g.*, Paul von Zielbauer, *The Nutmeg State Battles the Stigma of Corrupticut*, N.Y. Times, Mar. 28, 2003 ("Nowadays, from Storrs to Stamford, there are jokes about living in Corrupticut, Connection-icut or, the new favorite, Criminalicut.").[9]

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[9] *See also* Feinberg Decl. Ex. 22: Marc Santora, *Political Memo; The Whiff of Corruption Persists in Connecticut*, N.Y. Times, Sept. 21, 2003 (referring to the brewing Rowland scandal, "[w]hile the investigation continues, each new development chips away at the layer of trust between Connecticut's residents and their elected officials"); Stan Simpson, *Plain Talk About Corruption*, Hartford Courant, Oct. 8, 2003, ("For its size, little Connecticut –

For example, in 1999 State Treasurer Paul Silvester pled guilty to federal racketeering and money laundering charges stemming from a kick-back scheme involving state pension investments. Feinberg Decl. Ex. 11. In return for investing over $500 million of the state's pension funds with certain financial institutions, Silvester directed millions of dollars in "finder's fees" to be paid to various friends and associates, who then funneled part of the money back to his campaign fund. Feinberg Decl. Exs. 11-17. Silvester's various schemes resulted in the convictions of many individuals and companies.[10]

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proportionately – just may be the most corrupt state in the union. . . . No longer is it a far-fetched notion to link public officials here with jail time – or potential time."); Richard Lezin Jones, *Our Towns; Move Over, New Jersey. New Trend Puts the Con in Connecticut*, N.Y. Times, Nov. 30, 2003 (noting that the state's mounting corruption scandals "may be helping to give otherwise refined Connecticut an unexpected and unwanted mark of distinction in the region: the state with the most dysfunctional politicians"); Avi Salzman, *He's Leaving. Now the State Has to Restore its Reputation*, N.Y. Times, June 27, 2004 ("A half-decade of mounting political scandals have turned Connecticut into a punchline of political backwardness."); David A. Fahrenthold, *Political Scandals Refuse to Go Away in 'Corrupticut'; Officials' Wrongdoing Persists After Governor's 2005 Conviction*, Wash. Post, July 3, 2006 ("The past few years have revealed so many tales of graft, malfeasance and all-purpose criminality by public servants in Connecticut that it's hard to choose the most brazen.").

[10] In September 2002, after pleading guilty to conspiracy to launder money, Peter Hirschl was sentenced to a term of

In September 2005, State Senator Ernest Newton II pled guilty to federal bribery charges in connection with a kick-back scheme involving a non-profit organization in Bridgeport. Feinberg Decl. Ex. 19. In return for a $5,000 bribe, Newton

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imprisonment of five months, to be followed by five months of home confinement, and was ordered to pay a $15,000 fine. In 2003, Frederick McCarthy, Chairman of Triumph Capital, pled guilty to corruptly rewarding a public official and was sentenced to a prison term of a year and a day. Lisa Thiesfield, one of Silvester's friends, pled guilty to corruptly aiding and abetting a public official in accepting a reward; her sentence included a six-month term of imprisonment. Two other co-conspirators were convicted after a jury trial. Ben Andrews was convicted of nine counts, including bribery, mail and wire fraud, and money laundering and was sentenced to a 30-month term of imprisonment for his role in funneling the pension funds to private equity firm Landmark Partners. In addition, former assistant State Treasurer George Gomes was sentenced to two years' probation and fined $1,500 after pleading guilty to mail fraud for his role in the scheme. Silvester's brother, Mark Silverster, pled guilty to conspiracy to solicit and accept corrupt payments and was sentenced to a 21-month term of imprisonment and fined $40,000. In exchange for his cooperation with federal prosecutors, Christopher Stack was never charged. Charles Spadoni, Triumph Capital's General Counsel, was convicted on eight counts, including racketeering, racketeering conspiracy, bribery, and wire fraud and sentenced to 36 months' imprisonment. Spadoni's case remains ongoing, however. In September 2008, the Second Circuit reversed and remanded for a new trial on several of those counts, determining that the government had suppressed material, exculpatory evidence. *United States v. Triumph Capital, Inc.*, 544 F.3d 149, 152 (2d Cir. 2008).

agreed to assist the non-profit group, Progressive Training Associates, Inc., in its quest to secure a $100,000 grant from the state. *Id.* Newton also pled guilty to federal mail fraud and income tax evasion charges for diverting $40,000 in campaign contributions to his personal use. *Id.* Newton was ultimately sentenced to 60 months in federal prison and ordered to pay over $13,000 in restitution. Feinberg Decl. Ex. 21. *See also United States v. Newton*, Case No. 3:05cr233 (AHN), 2007 WL 1098479 (D. Conn.) (denying resentencing), *aff'd*, 226 Fed. Appx. 80 (2d Cir. 2007).

Although municipal officials are not eligible to receive CEP funding, nor are they subject to the CFRA's bans on contributions and solicitations from lobbyists and contractors, corruption cases involving local officials are nevertheless still relevant to the extent that they have contributed to the atmosphere of public distrust and perceived corruption of elected officials in the state. For example, in 2003, the mayor of Bridgeport, Joseph Ganim, was convicted of federal racketeering, extortion, bribery, mail fraud, and income tax evasion arising from a scheme to award city contracts in exchange for illegal kickbacks from contractors. *United States v. Ganim*, Case No. 3:01cr263 (JBA), 2006 WL 1210984, at *1 (D. Conn. 2006). At least three contractors also pled guilty to their role in that scheme. *United States v. Lenoci*, 377 F.3d 246, 248 (2d Cir. 2004) (noting that "Lenoci also agreed to raise funds for the mayor's anticipated campaign for governor, in return for Ganim's support for the [development project]");

Bridgeport Harbour Place I, LLC v. Ganim, 269 F. Supp. 2d 6, 7 (D. Conn. 2002) (noting that the three contractors "acknowledged that they corruptly provided bribes, kickbacks, and other things of value . . . in return for preferential treatment from Mayor Ganim in connection with the awarding of city contracts").[11]

2. *Corruption Scandals Spur Legislature to Consider Campaign Finance Reform*

Spurred in large part by the fall-out from the corruption scandals that culminated in the resignation of Governor Rowland and his subsequent indictment and conviction on federal corruption charges, Connecticut lawmakers undertook a comprehensive effort to pass

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[11] In addition, though not relevant to the events leading to the passage of the CFRA, it is worth noting that corruption scandals involving municipal officials continue to roil the state. For instance, the mayor of Hartford, Eddie Perez, was recently arrested on state bribery charges stemming from allegations that he accepted $40,000 worth of home renovations in exchange for facilitating the receipt and oversight of city contracts. *See, e.g.*, Jeffrey B. Cohen and Matthew Kauffman, *Hartford Mayor Arrested on Bribery Charges*, Hartford Courant, Jan. 28, 2009. Additionally, Shelton developer James Botti is scheduled to stand trial in October 2009 on federal bribery charges stemming from allegations that he bribed an unnamed Shelton politician, described in the indictment as "Public Official #1," in exchange for help pushing through development projects in the town. *See United States v. Botti*, Case No. 3:08cr230(CSH) (D. Conn.).

expansive campaign finance reforms. Following a failed legislative effort to pass campaign finance reform in June 2005, Governor M. Jodi Rell called upon the General Assembly to establish a Campaign Finance Reform Working Group (the "Working Group") to craft a bill while the legislature was out of session. July 11, 2007 Declaration of Jeffrey B. Garfield ("Garfield Decl. I") ¶ 12.

Comprised of twelve state legislators, six from the House and six from the Senate, the Working Group held eleven publicly televised meetings throughout the summer and fall of 2005. In August 2005, for instance, the Working Group heard testimony from the administrators of the clean election programs in Maine and Arizona. Garfield Decl. I, Ex. 19 at 26-28; 88-89. July 10, 2008 Declaration of Jeffrey B. Garfield ("Garfield Decl. II") Ex. 1, Tr. of Aug. 4, 2005 Working Group meeting. The Working Group also heard testimony from representatives of the intervenor-defendants, Common Cause and CCAG, along with representatives from the Brennan Center for Justice, which serves as defense counsel for the intervenor-defendants, and other national experts in the area of public financing and campaign finance reform. After three months of holding meetings, reviewing materials, taking testimony, and receiving expert advice, the Working Group presented a framework for a new bill to Governor Rell in late September 2005. Garfield Decl. I ¶ 14 and Ex. 25.

In its Summary Report to the Governor, the Working Group made several recommendations related to campaign finance reform, including a proposed public financing scheme, contribution and solicitation bans for lobbyists and state contractors, limitations/prohibitions on political action committee ("PAC") contributions, the number and amount of qualifying contributions to become eligible for public financing, public grant levels for all races, and rules for one-party-dominant districts. Garfield Decl. I Ex. 25. On the issue of qualifying contributions, the Working Group recommended that candidates be required to collect, in no more than $100 increments: (1) for the House, $5,000 from at least 150 individuals within their district; (2) for the Senate, $15,000 from at least 300 individuals within their district; (3) for state office (not Governor), $75,000, with at least 90% in-state contributions; and (4) for Governor, $250,000, with at least 90% in-state contributions. *Id.* at 7. The Working Group further recommended that participating candidates receive: (1) for the House, $8,000 for the primary and $25,000 for the general election; (2) for the Senate, $50,000 for the primary and $150,000 for the general election; (3) for statewide offices, $375,000 for the primary and $750,000 for the general election; and (4) for Governor, $1.25 million for the primary and $3 million for the general election. *Id.* For those participating candidates in "one-party-dominant" districts, meaning one major party holds a 20% or more registration advantage over the other major

party, the recommended primary grants would be raised to $25,000 for the House and $80,000 for the Senate. *Id.* at 8. Participating candidates running unopposed would be limited to 30% of the general election grant for that office. *Id.* at 9. Participating candidates opposed by a nonparticipating minor party who raised less than 30% of the applicable grant amount, would be eligible for public funding equal to 60% of the grant for that office. *Id.* Notably, the Working Group proposal did not contain a recommendation that non-major party candidates, i.e., minor party candidates and independent/petitioning candidates (collectively, "minor party candidates"),[12] should have to comply with additional qualifying criteria beyond collecting the requisite number and amount of qualifying contributions. *Id.* at 1-9. Ultimately, Governor Rell's proposed campaign finance reform bill did not contain additional qualifying criteria for minor party candidates seeking to qualify for public funding. Pl. Ex. 87, OLR Research Report, Summary of Governor's Proposed Campaign Finance Bill (October 4, 2005).

3. *The CEP is Enacted*

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[12] There are two categories of non-major parties – minor party candidates and petitioning/independent candidates who are unaffiliated with any party. Although I recognize that independent candidates are substantively distinguishable from minor party candidates, for ease of discussion, I will refer to both collectively as minor party candidates.

In the fall of 2005, Governor Rell convened a Special Session of the General Assembly for the sole purpose of enacting comprehensive campaign finance reform, stating that "[t]he very legitimacy of [the people's] government is called into question when – rightly or wrongly – the perception exists that a moneyed few play a special role or have a special influence over elections and policy." Garfield Decl. I ¶ 15 and Ex. 27. In calling the special session, her proclamation noted that, in the past decade the people of Connecticut had "endured . . . indictments, convictions and corruption investigations concerning their own state and local public officials" and that "the General Assembly can help to restore faith and trust in state government and further renew citizens' confidence in their leaders by enacting meaningful and comprehensive campaign finance reform." Garfield Decl. I Ex. 27.

The General Assembly convened for the special session on October 11, 2005 to debate and discuss the campaign finance reform proposals. *Id.* After caucusing for one month, the General Assembly leaders reached an agreement on a single campaign finance reform bill, Senate Bill 2103. Garfield Decl. I ¶ 16. Senate Bill 2103 modified the Working Group's proposed grant levels as follows: participating candidates seeking election to the Senate would receive $35,000 for the primary (down from $50,000) and $85,000 (down from $150,000) for the general election and those seeking election to the House would receive $10,000 for the primary (up from $8,000).

Significantly, the bill added additional qualifying criteria for minor party candidates seeking to participate in the CEP, as detailed more fully below.

The full General Assembly met in a special legislative assembly on November 30, 2005 to debate the proposed campaign finance reform bill. Garfield Decl. I ¶ 16. Although no formal findings accompanied passage of the law, the bill's sponsors described the general purpose behind the bill, i.e., to combat actual and perceived corruption in state government, stating that the bill would "take out sources of financing which have been considered to be corrosive" and "eliminat[e] the influence of money overall, and shift[] back to a greater reliance on grassroots." Garfield Decl. I Ex. 28, Tr. of Nov. 30, 2005 Senate Debate at 54 (statement of Sen. DeFronzo, Chairman of the Working Group).

During the Senate and House debates on Senate Bill 2103, legislators argued that the bill was necessary to redress the perception that special interests had undue influence, particularly in light of the recent political scandals. *Id.* at 29-30, 55-57, 61-62, 108-09, 238, 284-85, and 352- 53; Garfield Decl. I Ex. 29, Tr. of Nov. 30, 2005 House Debate, at 55-56, 95-97, and 281-82.

Senate Bill 2013 passed in the Senate on November 30, 2005 by a vote of 27-8, and passed in the House of Representatives on December 1, 2005 by a vote of 82-65. Garfield Decl. I ¶ 17. Governor Rell signed the bill into law on

December 7, 2005, Public Act 05-5, and it became effective on January 1, 2006. Garfield Decl. I ¶ 18. The Act was substantively amended in May 2006 (Public Act 06-137) and May 2008 (Public Act 08-02).

C. Provisions and Requirements of the CEP, as Amended, and as Construed and Applied by the SEEC

1. *Qualifying Criteria*

The CEP provides public campaign financing grants to qualifying candidates for statewide and state legislative office. In order to become eligible for CEP funding, candidates must first satisfy one or more qualifying criteria, depending on their party affiliation, i.e., major or minor party. A "major party" is defined as:

> (A) a political party or organization whose candidate for Governor at the last-preceding election for Governor received, under the designation of that political party or organization, at least twenty per cent of the whole number of votes cast for all candidates for Governor, or (B) a political party having, at the last-preceding election for Governor, a number of enrolled members on the active registry list equal to at least twenty per cent of the total number of enrolled members of all political parties on the active registry list in the state.

Conn. Gen. Stat. § 9-372(5). There are currently only two major parties in Connecticut: the

Democratic Party and the Republican Party (collectively, the "major parties").

To qualify for CEP funds, all candidates, regardless of party affiliation, must raise a certain number of qualifying contributions in amounts of $100 or less (hereinafter, "qualifying contributions"). Conn. Gen. Stat. § 9-704. The total amount of qualifying contributions that a candidate must raise depends upon the office for which the candidate is running. Gubernatorial candidates must raise $250,000 in qualifying contributions, $225,000 of which must come from state residents.[13] *Id.* § 9-704(a)(1). Candidates for other statewide offices, such as Lieutenant Governor, Attorney General, State Comptroller, State Treasurer, or Secretary of the State, must raise $75,000 in qualifying contributions, $67,500 of which must come from state residents. *Id.* § 9-704(a)(2). Candidates for state senate must raise $15,000 in qualifying contributions, which must include contributions from at least 300 individuals residing in that senate district. *Id.* § 9-704(a)(3). Candidates for state house must collect $5,000 in qualifying contributions from at

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[13] Although a person may be registered to vote in only one location, an individual may be "resident" of multiple locations for purposes of calculating CEP qualifying contributions. According to the SEEC, "[a]n individual who genuinely and actually resides at multiple locations may make qualifying contributions, which satisfy the 'in-state' or 'in-district' requirement, from the individual's residence at each of the locations." Garfield Decl. II Ex. 13, SEEC Declaratory Ruling 2007-4, at 2-3.

least 150 residents of that house district. *Id.* § 9-704(a)(4). Once they have raised the requisite number and amount of qualifying contributions, major party candidates do not need to satisfy any additional criteria in order to become eligible for a full CEP grant.[14]

In addition to collecting the requisite number of qualifying contributions, minor party candidates, however, must satisfy at least one of two additional requirements in order to qualify for public funding. First, a minor party candidate is eligible to receive public funding if that candidate, or another member of his or her party, received a certain percentage of the vote in the previous general election for the same office (the "prior success requirement"). To receive a one-third grant, the candidate, or a member of her party, must have received at least 10% of the vote in the preceding general election. *Id.* §§ 9-705(c)(1), (g)(1). To be eligible for a two-thirds grant, the candidate, or a member of his or her party, must have received at least 15% of the vote in the preceding election. *Id.* To obtain a full CEP grant, the prior vote requirement increases to 20%. *Id.*

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[14] A major party candidate's total grant amount may be increased or reduced depending on whether he or she faces a primary opponent, he or she is running unopposed in the general election, his or her opponent's party affiliation, and whether the opponent is participating in the CEP or not. Conn. Gen. Stat. § 9-705(j).

Second, a minor party candidate can qualify for public funding by gathering signatures of qualified voters (the "petitioning requirement").[15] *Id.* § 9-705(c)(2), (g)(2). If a minor party candidate gathers signatures equal to 10% of the votes cast in the previous election for that office, the candidate is entitled to receive one-third of the full CEP grant for the general election. *Id.* To obtain a two-thirds grant, that candidate must collect signatures equal to 15% of the votes cast in the prior election. *Id.* To be eligible for full CEP funding, the signature requirement increases to 20%. *Id.*

2. *CEP Funding Levels*

a. Primary Funding

Participating major party candidates running in contested primary elections are eligible to receive primary funding under the

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[15] Minor party candidates who received less than 10% of the vote, but more than 1% of the vote, in the preceding election are eligible to qualify for CEP funding using the petitioning option. Garfield Decl. II Ex. 14, SEEC Declaratory Ruling 2008-01, at 4 6. Plaintiffs urge me not to accept this interpretation of the provision because it is not explicit on the face of the statute. Because the SEEC appears to have enforced the Act consistently with its declaratory ruling, however, I conclude that minor party candidates who received between 1% and 9.99% of the vote in the previous election may still attempt to qualify for the CEP under the petitioning provision.

CEP.[16] *Id.* § 9-705. The CEP provides the following grants for primary contests: $1.25 million for gubernatorial candidates; $375,000 for all other statewide candidates; $35,000 for state senate candidates; and $10,000 for state representative candidates. *Id.* §§ 9-705(a)(1), (b)(1), (e)(1), (f)(1). The CEP increases the amount of primary grants for major candidates in one-party dominant districts. A district is considered "one-party dominant" if the percentage of registered voters for one major party exceeds the number of registered voters in the other major party by at least 20%.[17] *Id.* §§ 9-705(e)(1)(A),

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[16] The statutory text explicitly grants primary funding only to major party candidates. The state contends this is because only major parties are required to hold primary elections under certain mandatory procedures and candidates may only participate in a primary if they make the necessary showing of support as required under Connecticut law. Conn. Gen. Stat. §§ 9-400, 9-415. According to the state, if a minor party opted to select its candidates through a primary, which they currently do not do, a participating minor party candidate could be eligible for a CEP primary grant. Garfield Decl. II ¶ 13.

[17] Specifically, the statute states that "if the percentage of the electors in the district served by said office who are enrolled in said major party exceeds the percentage of the electors in said district who are enrolled in another major party by at least twenty percentage points, the amount of said grant shall be seventy-five thousand dollars." Conn. Gen. Stat. § 9-705(e)(1)(A). For candidates for state representative, "if the percentage of the electors in the district served by said office who are enrolled in said major party exceeds the percentage of the electors in said district who are enrolled in another major party by at least twenty percentage points, the amount of said grant shall be twenty-five thousand dollars." *Id.* § 9-705(f)(1)(A).

(f)(1)(A). In those instances, the primary grants for participating "dominant party" candidates for state senate increases to $75,000 and for participating "dominant party" candidates for state representative increases to $25,000. *Id.*

Any amount of a primary grant that is not expended will be reduced from the participating candidate's general election grant. *Id.* § 9-705(j)(2).

b. General Election Funding

The CEP sets the following grant levels for the general election: $3 million for gubernatorial candidates; $750,000 for other statewide offices;[18] $85,000 for senate candidates; and $25,000 for candidates for state representative. *Id.* §§ 9-705(a)(2), (b)(2), (e)(2), (f)(2). The CEP provides for an adjustment for inflation for primary and general election grants, beginning in 2010 for General Assembly candidates, and in 2014 for statewide candidates. *Id.* § 9-705(d) and (h).

An "elector" is essentially a registered voter. As defined by the Connecticut Constitution: "Every citizen of the United States who has attained the age of eighteen years, who is a bona fide resident of the town in which he seeks to be admitted as an elector and who takes such oath, if any, as may be prescribed by law, shall be qualified to be an elector." Conn. Const. Art. 6, § 1.

[18] Candidates for Lieutenant Governor do not receive general election funding because they run on the same slate as the gubernatorial candidate for their party. Thus, the general election funding for gubernatorial candidates covers both candidates for Governor and Lieutenant Governor.

Grants for statewide candidates will be adjusted for inflation beginning with the 2014 election cycle. *Id.* § 9-705(d). Candidates who accept public funding may not accept any private contributions, other than the initial qualifying contributions, and, with a few exceptions detailed below, generally may not spend money in excess of the original full public grant. *Id.* § 9-702(c).

c. Expenditure Limits

Candidates seeking to participate in the CEP must abide by statutory expenditure limits. The CEP establishes three distinct periods, with differing expenditure limits. In the first period, which I will refer to as the "pre-primary, pre-general election period," the candidate's expenditure limit is the amount of qualifying contributions for that office and any personal funds provided by the candidate, as permitted by section 9-710(c). *Id.* § 9-702(c)(A). If the candidate is running in a primary election, the expenditure limit for the "primary period" is the sum of the amount of qualifying contributions and permitted personal funds not spent during the preprimary, pre-general election period, plus the CEP primary grant and any supplemental grants released pursuant to the trigger provisions. *Id.* § 9-702(c)(B). Finally, for the "general election period," the candidate's expenditure limit is the sum of the amount of qualifying contributions and personal funds not spent during the pre-primary, pre-general election and primary periods, any unexpended funds from CEP grants released for the primary period, and the general election grant

plus any supplemental grants released pursuant to the trigger provisions. *Id.* § 9-702(c)(C).

The plaintiffs contend that the pre-primary, pre-general election expenditure limit applies to a candidate who is seeking to qualify for CEP funding until that candidate actually qualifies for a CEP grant; according to the plaintiffs, this is known as the "qualifying" period. The plaintiffs, for example, believe that a minor party candidate for state house seeking to qualify for a CEP grant under the petitioning requirement is limited to spending $5,000 until that candidate actually qualifies for the CEP, which might not occur until mid-October, just weeks before the general election. Beth Rotman, the SEEC Director of Public Financing, disputes the plaintiffs' interpretation of the CEP's expenditure limits, stating that there is no so-called "qualifying period" expenditure limit in the CEP. March 10, 2009 Rotman Decl. ¶ 4. According to Rotman, the key event for determining which expenditure limit is applicable is the date the candidate becomes the official nominee of his or her party. *Id.* ¶¶ 6-7. Once the candidate becomes the nominee for his or her party, the general election expenditure limit applies, regardless whether the candidate has yet qualified for a CEP grant. *Id.* Therefore, even though a candidate has not yet received his or her CEP grant, so long as he or she has been formally nominated by his or her party, he or she may incur obligations for services or goods up to the amount of the applicable expenditure limit for that office, provided those goods and services are not being

provided on spec (i.e., that the payment will be made whether or not the candidate actually receives a grant). *Id.* ¶ 8. Therefore, taking the example of Deborah Noble, the Working Families Party nominee for the 16th House District, because she was nominated to be the Working Families candidate on July 10, 2008, she was subject to the general election expenditure limit from July 11, 2008 onward, even though she did not submit her application for a CEP grant until October 10, 2008.[19] *Id.* ¶ 7.

Assuming no primary election, the expenditure limit for participating gubernatorial candidates is $3.25 million (plus an additional $1.25 million in the event of a primary). For other participating statewide candidates, the effective expenditure limit is $825,000 (plus an additional $375,000 for candidates in a primary election). In the General Assembly races, the expenditure limit is $100,000 for candidates for state senate and $30,000 for candidates for state representative. Depending on the type of district, i.e., party-dominant or not, the amount of a primary grant would increase the expenditure limit by $35,000 or $75,000 for state senate candidates and by $10,000 or $25,000 for state

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[19] Although this interpretation of the statute is not explicit on its face, because the SEEC attests it has enforced the CEP's expenditure limits consistently with this interpretation, and will continue to do so in the future, I accept the SEEC's statement that there is no "qualifying period" expenditure limit.

house candidates. As explained more fully below, there are additional grants and expenditures that are not subject to those limits.

d. Reduced CEP Grants

Participating candidates may receive a reduced grant depending on whether they are running unopposed or against a minor party candidate. CEP general election grants for unopposed major party candidates are reduced to 30% of the full grant amount for that office, resulting in the following grant amounts: $900,000 for gubernatorial candidates; $225,000 for other statewide candidates; $25,500 for senate candidates; and $7,500 for house candidates. Conn. Gen. Stat. § 9-705(j)(3). A minor party candidate's entrance into a race will bring those grant totals for the participating major party candidate up to 60% of the full grant amount, provided the minor party candidate has not raised an amount equal to the qualifying contribution threshold level for that office or qualified for a partial or full CEP grant. *Id.* § 9-705(j)(4). For example, a participating major party candidate for state senate with only a non-participating minor party opponent, whose contributions total less than $15,000, will receive a $51,000 CEP general election grant. A participating major party candidate for state representative with a nonparticipating minor party opponent who has raised less than $5,000 will receive a grant of $15,000.

If the minor party candidate becomes eligible for even a partial CEP grant or raises private contributions that exceed the amount equal to the qualifying contribution amount for that office, then the participating major party candidate receives a full CEP grant. Conn. Gen. Stat. § 9-705(j)(4). Minor party candidates who qualify for a partial CEP grant may raise private contributions, in increments of $100 or less, up to the full grant amount. *Id.* § 9-702(c). In certain instances, participating minor party candidates may be eligible for post-election reimbursements if they achieve a certain level of success in the election. Participating minor party candidates are eligible to receive a post-election supplemental grant so long as that candidate: (1) qualified for at least a partial CEP grant prior to the election; (2) received a percentage of the vote that corresponds to a higher grant level; and (3) reports a deficit immediately following the election. *Id.* §§ 9-705(c)(3), (g)(3).

Finally, a participating major party candidate will receive a full CEP grant if his or her opponent is a major party candidate, regardless whether that opponent has qualified for CEP funding.

3. *CEP Trigger Provisions*

In addition to the primary and general election grants, participating candidates are eligible to receive additional public funds, in the form of supplemental grants, in the event they are outspent by a nonparticipating candidate or

by any other non-candidate individual or group (collectively, the "trigger provisions"). *See* Conn. Gen. Stat. §§ 9-713 ("excess expenditures"); 9-714 ("independent expenditures"). Each supplemental grant is capped at a maximum 100% of the full grant for any given office; participating candidates are thus eligible to receive an additional 200% of the full grant in supplemental funding. *Id.* Any participating candidate is eligible to receive supplemental grants under the trigger provisions. *See id.*

a. Excess Expenditure Trigger

The CEP provides matching funds for participating candidates who are outspent by a nonparticipating opponent – who is not bound by any expenditure limit – in the primary or the general election ("excess expenditure trigger"). Conn. Gen. Stat. § 9-713. If a non-participating candidate receives contributions or spends more than an amount equal to the participating candidate's expenditure limit, then the participating candidate is eligible to receive up to four additional grants, each worth 25% of the full grant. *Id.* The excess expenditure grants are distributed whenever the non-participating candidate receives contributions or makes expenditures exceeding 100%, 125%, 150%, and 175% of the expenditure limit for that particular office. *Id.*; *see also* Pl. Ex. 61, SEEC, Understanding Connecticut Campaign Finance Laws: A Guide for 2008 General Assembly Candidates Participating in the Citizens' Election Program ("2008 SEEC CEP Guide"), at 65-66.

Recent amendments to the CEP permit the participating candidate to access the full 25% supplemental grant immediately. Conn. Gen. Stat. § 9-713; *see also* Public Act 08-02, § 19. Under an earlier version of the CEP, if a non-participating candidate received contributions or spent in excess of the participating candidate's expenditure limit, the participating candidate's 25% supplemental grant would be held in escrow by the SEEC and distributed on a dollar-perdollar basis. *Green Party I*, 537 F. Supp. 2d at 363. As amended, rather than holding each grant in escrow, the participating candidate receives the full value of the supplemental grant immediately, meaning that even if a non-participating candidate spends only $1 over the expenditure limit, the participating candidate opponent receives an immediate 25% supplemental grant. Conn. Gen. Stat. § 9-713; Pl. Ex. 61, 2008 SEEC CEP Guide, at 65-66.

b. Independent Expenditure Trigger

The CEP also contains a trigger provision tied to independent expenditures made by non-candidate individuals and political advocacy groups ("independent expenditure trigger"). Conn. Gen. Stat. § 9-714. A qualifying independent expenditure is "an expenditure that is made without the consent, knowing participation, or consultation of, a candidate or agent of the candidate committee and is not a coordinated expenditure," *id.* § 9-601(18), and that is made "with the intent to promote the defeat of a participating candidate." *Id.* § 9-714(a). Matching

funds under this provision are triggered when non-candidate individuals or groups make independent expenditures advocating the defeat of a participating candidate, that in the aggregate, and when combined with the spending of the opposing non-participating candidates in that race, exceed the CEP grant amount. *Id.* § 9-714(c)(2). Funds are distributed to the participating candidate on a dollar-per-dollar basis to match the amount of the independent expenditure(s) in excess of the full grant amount. *Id.* § 9-714(a).

Notably, independent expenditures made in *support* of a candidate (without expressly advocating the defeat of an opponent) do not count towards the independent expenditure trigger, meaning individuals and groups are entitled to make unlimited independent expenditures in support of a candidate without triggering CEP matching funds for that candidate's opponents. *See generally id.* § 9-714; *see also* Pl. Ex. 61 at 57 (noting that a targeted candidate is eligible for a supplemental grant under the independent expenditure trigger provision if the expenditure "expressly advocates the defeat of a participating candidate"). SEEC regulations define expressly advocating the defeat of a candidate to mean:

> 1. Conveying a public communication containing a phrase including, but not limited to, "vote against," "defeat," "reject," or a campaign slogan or words that in context and with limited reference to

> external events, such as the proximity to the primary or election, can have no reasonable meaning other than to advocate the defeat of one or more clearly identified candidates; or
>
> 2. Making a public communication which names or depicts one or more clearly identified candidates, which, when taken as a whole and with limited reference to external events, contains a portion that can have no reasonable meaning other than to urge the defeat of the candidate(s), as evidenced by factors such as the presentation of the candidate(s) in a unfavorable light, the targeting, placement, or timing of the communication, or the inclusion of statements by or about the candidate.

Conn. Agencies. Regs. § 9-714-1; Pl. Ex. 36. Furthermore, because they are considered uncoordinated expenditures, independent expenditures made in support of a candidate do not count towards an excess expenditure trigger. *Id.* §§ 9-713, 9-714; *see also* Pl. Ex. 61, 2008 SEEC CEP Guide, at 54.

Independent expenditures in excess of $1,000 that are made in support of a participating candidate or to promote the defeat of a participating candidate must be reported to the SEEC, even if they would not trigger matching funds for the participating candidate. Conn. Gen. Stat. § 9-612(e)(2). If such an expenditure is made more than 20 days before the day of an election, it

must be reported within 48 hours of the expenditure. *Id.* If such an expenditure is made 20 days or less before the day of an election, it must be reported within 24 hours. *Id.*

4. *Organization Expenditures*

The CEP exempts from the definition of "contribution" or "expenditure" certain expenditures made on behalf of participating candidates by party and legislative committees, known as "organization expenditures." An organization expenditure is defined as "an expenditure by a party committee, legislative caucus committee or legislative leadership committee for the benefit of a candidate or candidate committee."[20] Conn. Gen. Stat. § 9-

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[20] A "party committee" is defined as "a state central committee or a town committee." Conn. Gen. Stat. § 9-601(2).

A "legislative caucus committee" is defined as "a committee established under subdivision (2) of subsection (e) of section 9-605 by the majority of the members of a political party who are also state representatives or state senators." *Id.* § 9-601(22).

A "legislative leadership committee" is defined as "a committee established under subdivision (3) of subsection (e) of section 9-605 by a leader of the General Assembly." *Id.* § 9-601(23). The speaker of the House of Representatives, the majority leader of the House, president pro tempore of the Senate, and majority leader of the Senate may each establish one legislative leadership committee. *Id.* § 9-605(e)(3). The minority leaders of the House and Senate may each establish two legislative leadership committees. *Id.*

601(25). There are four legislative caucus committees: one for each major party in the House and one for each major party in the Senate. *Id.* § 9-605(e)(2). There are eight legislative leadership committees. *Id.* § 9-605(e)(3). There are 366 state and town party committees. March 4, 2009 Decl. of Jeffrey Garfield ("Garfield Decl. III") Ex. A. Because there are no minor party members of the General Assembly, there are no minor party legislative leadership or legislative caucus committees, although minor parties can and do have state and town party committees.

The CEP permits party and legislative committees to make organization expenditures for the following purposes:

> (A) The preparation, display or mailing or other distribution of a party candidate listing. As used in this subparagraph, "party candidate listing" means any communication that meets the following criteria: (i) The communication lists the name or names of candidates for election to public office, (ii) the communication is distributed through public advertising such as broadcast stations, cable television, newspapers or similar media, or through direct mail, telephone, electronic mail, publicly accessible sites on the Internet or personal delivery, (iii) the treatment of all

candidates in the communication is substantially similar, and (iv) the content of the communication is limited to (I) for each such candidate, identifying information, including photographs, the office sought, the office currently held by the candidate, if any, the party enrollment of the candidate, a brief statement concerning the candidate's positions, philosophy, goals, accomplishments or biography and the positions, philosophy, goals or accomplishments of the candidate's party, (II) encouragement to vote for each such candidate, and (III) information concerning voting, including voting hours and locations;

(B) A document in printed or electronic form, including a party platform, a copy of an issue paper, information pertaining to the requirements of this title, a list of registered voters and voter identification information, which document is created or maintained by a party committee, legislative caucus committee or legislative leadership committee for the general purposes of party or caucus building and is provided (i) to a candidate who is a member of the party that has established such party committee, or (ii) to a candidate who is a member of the party of the caucus or leader who has established such legislative caucus committee or legislative leadership committee, whichever is applicable;

(C) A campaign event at which a candidate or candidates are present;

(D) The retention of the services of an advisor to provide assistance relating to campaign organization, financing, accounting, strategy, law or media; or

(E) The use of offices, telephones, computers and similar equipment which does not result in additional cost to the party committee, legislative caucus committee or legislative leadership committee.

Id.

The CEP limits organization expenditures made on behalf of participating candidates for the General Assembly, but not for statewide office. Conn. Gen. Stat. § 9-718. Specifically, under the CEP, each committee is limited to making $10,000 in organization expenditures on behalf of candidates running for state senator and $3,500 in organization expenditures on behalf of candidates running for state representative. *Id.* The CEP further prohibits any primary election organization expenditures made on behalf of candidates running for state senator or state representative. *Id.* Committees are required to report all organization expenditures made on behalf of participating candidates. Conn. Gen. Stat. § 9-608(c)(5).

The present organization expenditure provisions were revised in 2006 in an effort to close the perceived organization expenditure

"loophole" that existed. Previously, party and legislative committees were permitted to make unlimited expenditures for the advertising, campaign staff, and consultant and fundraising costs for *all* participating candidates, statewide and General Assembly alike. The General Assembly passed some amendments to the CEP in May 2006, narrowing the organization expenditure provision to its present construction by limiting the amount of organization expenditures that can be made on behalf of candidates running for General Assembly.

5. *Exploratory Committees*

Before declaring their official intent to seek public office, individuals are permitted to set up exploratory committees to "test the waters" for a potential campaign.[21] SEEC Declaratory Ruling 2007-02 at 1 ("SEEC Ruling 2007-02"). Once a candidate declares his or her official intent to seek a party's nomination for or election to a specific office, the candidate has 15 days to dissolve the exploratory committee and set up a

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[21] The CFRA defines an exploratory committee as "a committee established by a candidate for a single primary or election (A) to determine whether to seek nomination or election to (i) the General Assembly, (ii) a state office, as defined in subsection (e) of section 9-610, or (iii) any other public office, and (B) if applicable, to aid or promote said candidate's candidacy for nomination to the General Assembly or any such state office." Conn. Gen. Stat. § 9-601(5).

candidate committee.[22] Conn. Gen. Stat. §§ 9-608(f), 9-604(c). A candidate who intends to participate in the CEP may use his or her exploratory committee to begin collecting the necessary qualifying contributions. SEEC Ruling 2007-2 at 2. Once a candidate officially declares his or her candidacy and establishes a candidate committee, the candidate committee assumes the exploratory committee's surplus or deficit. Conn. Gen. Stat. § 9-608(f). For those candidates who intend to participate in the CEP, any surplus that exceeds the total amount of qualifying contributions must be given to the Citizens' Election Fund. *Id.*

Exploratory committees, unlike official candidate committees, are not subject to the CEP fundraising restrictions and expenditure limits. *See id.* § 9-702. Therefore, it is possible for a candidate to raise and spend campaign contributions outside the limits set by the CEP until that candidate forms a candidate committee and agrees to abide by the CEP expenditure limits. The CEP does not require that a potential candidate declare his or her intent to participate

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[22] A candidate committee is defined as "any committee designated by a single candidate, or established with the consent, authorization or cooperation of a candidate, for the purpose of a single primary or election and to aid or promote such candidate's candidacy alone for a particular public office or the position of town committee member, but does not mean a political committee or a party committee." Conn. Gen. Stat. § 9-601(4).

in the public financing program, and thus abide by the CEP expenditure limits, until 25 days prior to the primary or 40 days prior to a general election. *Id.* § 9-703(a).

6. *2006 Amendments*

After signing the CFRA into law, Governor Rell asked Garfield to study the CFRA in order to make suggestions for its improvement. On March 13, 2006, Garfield appeared before the Joint Committee on Government Administration and Elections (the "GAE Committee") to testify about the SEEC's recommended changes to the CFRA. Garfield first suggested narrowing the organization expenditure "loophole." Pl. Ex. 5, Garfield March 13, 2006 Written Statement to the GAE Committtee, at 1-2. Garfield next recommended lowering the 20% qualifying threshold for minor party candidates to become eligible for full CEP financing, stating that the "standards for [minor party candidate] participation . . . are so high that it is very unlikely that these candidates would qualify for any public grants." *Id.* at 2. Garfield suggested that a 5% standard – 5% of prior vote total or 5% signature requirement (in addition to the qualifying contributions requirement) – was a sufficient safe harbor to protect the state's interests. *Id.* Garfield further recommended that those minor party candidates who qualified for a partial CEP grant should be permitted to raise contributions up to the amount of the full grant to make up the difference in funding with his or her major party opponents. *Id.* Garfield also

recommended that qualifying contributions come from registered *voters* in the state or district, rather than from mere *residents* of the state or district. *Id.* at 3. Garfield testified in favor of House Bill 5610, which would have relaxed the prior success and petitioning requirement thresholds from 10/15/20% to 3/4/5%. Garfield Decl. II Ex. 4, Tr. 03/13/06 GAE Committee Hearing at 122 (testimony of SEEC Director Jeffrey Garfield). In addition, Secretary of the State Susan Bysiewicz testified in favor of reforms that would permit more minor party and petitioning candidates to receive public funding. *Id.* at 108 (testimony of Sec. of the State Susan Bysiewicz).

The General Assembly took up those issues during its regular 2006 session, passing several substantive and technical amendments to the CEP in May 2006. Public Act 06-137, which was signed into law by Governor Rell on June 6, 2006, addressed some, but not all, of Garfield's concerns regarding the CEP's treatment of party and legislative leadership committees' organization expenditures and the qualifying criteria for minor party candidates. Specifically, the General Assembly narrowed the organization expenditure loophole by prohibiting legislative leadership committees from making organization expenditures on behalf of primary candidates and by limiting such expenditures for the general election to $10,000 for Senate races and $3,500 for House races. Public Act 06-137, § 16. The CEP was further amended to permit those candidates who qualified for a partial CEP grant to raise

contributions, in $100 increments, up to the full amount of the grant. *Id.* at § 20(c). The amendments did not lower, or otherwise adjust in any way, the CEP's qualifying criteria for minor party candidates.

D. Statewide and General Assembly Elections in Connecticut Pre-2008

1. *Legislative Elections*

There are 36 state senate districts and 151 state house districts in Connecticut. Historically, most legislative districts in Connecticut have been one-party-dominant, meaning that candidates from one of the two major parties have often run unopposed or without competition from the other major party. Elections are considered "non-competitive" when a major party candidate: runs unopposed, runs against only a minor party candidate, or wins by more than 20% over the other major party candidate. According to the defendants' expert Donald Green, political scientists typically dub any legislative district where a major party candidate wins over 60% of the vote to be a "safe" district for that major party. Pl. Ex. 21, Supplemental Expert Report of Donald Green, at 1. In other words, a candidate that wins by more than 20% – using Green's 60/40 vote split as the baseline – is in a "safe," party-dominant district. *Id.* As explained more fully below, given the overwhelming dominance of one of the two major parties in many districts, prior to the first CEP-funded elections in 2008, a majority

of the General Assembly districts in Connecticut were considered "safe."

a. General Assembly Elections: 2006, 2004, and 2002

The 2006 election results demonstrate just how few state legislative elections in Connecticut involve "competitive" races.[23] On the state senate side, nine out of 36 races had only one major party candidate; of those nine races, six major party candidates ran unopposed and three had only minor party competition. In the 27 senate districts in which both major parties ran candidates, a major party candidate won by more than 20% of the vote in 17 races, meaning the winning major party candidate won by a landslide in 63% of the races with two major party candidates. Out of 36 state senate races, therefore, only 10 races were considered "competitive" between the major party candidates, meaning the major party candidates' vote totals were within 20% of one another. Put differently, 72% of the state senate races were not competitive in 2006.

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[23] 23 Election results are drawn from the Connecticut Secretary of the State website. The 2006 election results for state senate may be found at: http://www.sots.ct.gov/sots/cwp/view.asp?a=3188&q=392586 (last visited August 26, 2009). I have included those election results in Appendix C.

The picture is not any different on the state house side.[24] Out of 151 races for state representative, 61 had only one major party candidate; of those 61 races, 40 major party candidates ran unopposed and 21 had only minor party competition. Of the 90 races that had candidates from both major parties, a major party candidate won by more than 20% of the vote in 64 races, meaning the winning major party candidate won by a landslide in 71% of the races with two major party candidates. Out of 151 races, therefore, only 26 were considered "competitive" between the major party candidates. In other words, 83% of the state house races were not competitive in 2006.

Looking at all the General Assembly races in 2006, 70 of 187 races were uncontested by one of the major parties. In addition, in three state senate races and nine state house races, a major party candidate received less than 20% of the vote. Thus, in 2006, 82 of 187 (44%) General Assembly races were either uncontested by one of the major parties, or resulted in one of the major party candidates receiving less than 20% of the vote.

The state legislative races in 2004 and 2002 demonstrate that the trend of uncontested

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[24] The 2006 results for state representative may be found at the Connecticut Secretary of the State's website: http://www.sots.ct.gov/sots/cwp/view.asp?a=3188&q=392566 (last visited August 26, 2009). I have included those election results in Appendix D.

and weak major party candidates in a high percentage of General Assembly races has been consistent over the past decade.[25] In 2004, out of 36 state senate races, five major party candidates ran unopposed and eight had only minor party competition. Looking at the 23 races where both major parties ran candidates, a major party candidate won by more than 20% of the vote (i.e., by a landslide) in 15 of those races. Thus, out 36 state senate races, only eight were truly competitive in 2004. In other words, 78% of state senate races were not competitive in 2004.

On the state representative side in 2004, out of 151 state house races, 34 major party candidates ran unopposed and 28 had only minor party competition. Focusing on the 89 races where both major parties ran candidates, a major party candidate won by more than 20% of the vote in 58 races, meaning only 31 were competitive races between the major parties, or put differently, 79% of state house races were not competitive in 2004. In addition, in those races with candidates from both major parties, seven major party candidates for state representative received less than 20% of the vote. Thus, looking at all the state legislative races in 2004, 82 of 187

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[25] The results for those elections may be found at the Connecticut Secretary of the State's website, http://www.sots.ct.gov/sots/cwp/view.asp?a=3179&Q=392194&SOTSNav_GID=1846 (last visited August 26, 2009). I have included the 2004 election results in Appendices A & B.

(44%) General Assembly districts were either uncontested by one of the major parties, or resulted in one of the major party candidates receiving less than 20% of the vote.

In 2002, out of 36 state senate races, six major party candidates ran unopposed and two faced only minor party competition. Of the 28 races that were contested by both major parties, one major party candidate won by a landslide (more than 20% of the vote) in 22 races. Thus, only six state senate races were truly competitive in 2002. In other words, 83% of state senate races were not competitive.

Turning to the elections for state representative in 2002, once again, the election results show that a substantial majority of Connecticut's legislative districts are one-party-dominant. Out of 151 districts, 37 major party candidates ran unopposed and 13 had only minor party competition. Focusing on the 101 districts that were contested by both major parties, a major party candidate won by more than 20% of the vote in 60 races; only 41 state house races were considered competitive in 2002. Thus, in 2002, 73% of the races for state representative were not competitive. In addition, in nine state house races, a major party candidate failed to garner more than 20% of the vote. Looking at the state legislative elections as a whole, in 2002, 67 of 187 (36%) General Assembly districts were either uncontested by one of the major parties, or resulted in one of the major party candidates receiving less than 20% of the vote.

In the 2002, 2004, and 2006 elections, there were a total of 179 minor party candidates on the ballot, not including cross-endorsed major party candidates.[26] *See* Pl. Ex. 30, OLR Research Report, Past Performance of Petitioning and Minor Party Candidates in Connecticut ("OLR Past Performance Report"), at 4-12; Connecticut Secretary of the State, 2006 Election Results, *available at* http://www.sots.ct.gov/sots/cwp/view.asp?a=3179

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[26] The OLR Past Performance Report summarizes how many petitioning and minor party legislative candidates were on the ballot in 2000, 2002, and 2004. On page 4 of that report, it reports that there were 14 minor party candidates for state senate in 2002. According to Table 7 of that report, however, there were only 10 minor party candidates for state senate in 2002. A comparison to the Connecticut Secretary of the State election results website reveals that there were 10 minor party state senate candidates in 2002: http://www.ct.gov/sots/cwp/view.asp?a=3188&q=392542 (last visited August 26, 2009). Therefore, my calculations reflect that 10 minor party candidates ran for state senator in 2002. In addition, the chart dividing those candidates *into percentage of the vote won should be changed as* follows: in 2002, three state senate candidates (not six) in the 1% to 1.99% range and zero candidates (not one) in the 10% to 14.99% range.

In calculating the 2002 to 2006 minor party candidate record, I relied on the data, with the above described adjustments, contained in the OLR report for the 2002 and 2004 elections, and on the vote totals retrieved from the Connecticut Secretary of the State website for the 2006 election.

&Q=392194&SOTSNav_GID=1846 (last visited August 26, 2009). Although no minor party candidate won election to office, several garnered a statistically significant percentage of the vote. Between 2002 and 2006, 78 minor party candidates received less than 3% of the vote; 16 received between 3% and 3.99%; 11 received between 4% and 4.99%; 47 received between 5% and 9.99%; 17 received between 10% and 14.99%; 4 received between 15% and 19.99%; and 4 received 20% or more of the vote. Of the 25 candidates who received more than 10% of the vote, 23, or 92% of minor party candidates, ran against only one major party candidate.

Turning to 2006 specifically, out of 45 minor party candidates (excluding cross-endorsed major party candidates): 16 received less than 3% of the vote; three received between 3% and 3.99%; two received between 4% and 4.99%; 13 received between 5% and 9.99%; 10 received between 10% and 14.99%; none received between 15% and 19.99%; and one candidate, Michael E. Royston, received over 20% of the vote. Appendices C & D. Therefore, based on prior vote totals, only eleven minor party candidates were eligible to receive partial or full CEP funding for the 2008 elections. All but one of the eleven minor party candidates who garnered 10% or more of the vote in 2006 were competing against only one major party candidate. The 21 minor party candidates facing two major party candidates received, on average, 2.93% of the vote. The 24 minor party candidates who competed against only one major party candidate received, on average, 8.9% of the vote.

b. General Assembly Elections: 2008[27]

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[27] Although the 2008 election results are certainly relevant to the issues presented by plaintiffs' challenge to the CEP, I hesitate to draw significant conclusions about the CEP's future impact on the basis of the 2008 election because there is no way to determine what effect the pendency of this litigation had on the election strategies and decisions of major and minor parties. For instance, the state urges me to find that the "net contestedness" of General Assembly districts did not vary widely from 2006 to 2008 – the number of contested state senate districts remained flat and the number of contested house districts dropped by two. *See* Appendices C-F. The state therefore argues that the CEP must not encourage increased "contestedness" of General Assembly elections by major parties who formerly abandoned districts historically dominated by the other major party. After just one year of operation, and considering the pendency of this litigation, however, it would not be wise to draw the conclusion that the CEP will *never* encourage increased contestedness in historically abandoned districts. Indeed, as explained more fully below, the major parties have no incentive to keep the status quo of one-party-dominant districts, particularly when the prospect of easily qualifying for CEP funding will encourage major parties to challenge entrenched incumbents and slowly break down the dominant party's advantage over time. Indeed, when various legislators spoke with regard to the CEP's impact during the late 2005 Special Session, many touted (or denounced) its potential to encourage major party competition. Garfield Decl. 1 Ex. 28, Tr. of Nov. 30, 2005 Senate Debate, at 83-84 (statement of Sen. Meyer, noting that the public interest in the bill "goes to the health of a two-party system" and encouraging more competitive races); *id.* at 170 (statement of Sen. Murphy, agreeing with Senator Meyer's statement that having more competitive elections is "a great thing for democracy"); *id.* at 343 (statement of Sen. McKinney, expressing concern about the CEP because, in enacting the CEP, the legislature has

In 2008, on the state senate side, 27 out 36 districts were contested by both major parties, the same as in 2006;[28] in seven districts, a major

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"completely stacked the deck against third-party candidates"); *id.* at 361 (statement of Sen. DeLuca, noting that the CEP will increase contestedness because it will "help to ensure those that couldn't raise money and now would be able to get into the process"). Garfield Decl. I Ex. 29, Tr. of Nov. 5, 2005 House Debate, at 37-39 (statement of Rep. Cafero, describing the CEP as promoting an "even playing field" between the major party candidates, and that the public financing will create a "different game" for minority parties in party-dominant districts by giving the non-dominant major party candidate "some serious cash to play with"); *id.* at 55 (statement of Rep. Caruso, noting that "[t]he intent of campaign finance reform, coupled with public financing, is to encourage participation in our democratic system, to allow individuals that traditionally cannot because they cannot amass the necessary funds to wage an effective campaign" and that the CEP "would provide [those candidates] the opportunity" to participate). To adopt the state's interpretation that the CEP will not encourage increased major party competition in party-dominant districts is to be willfully blind to its readily apparent mechanics.

[28] The state's figures about "net competitiveness" contained in paragraph 14 of the Foster Declaration are wholly inaccurate. For example, Foster states that the 35th Senate District was "newly competitive" in 2008, when in fact the Republican candidate ran uncontested. On the house side, Foster states that the 29th, 73rd, and 108th House Districts were "newly competitive," when in fact, there was only one major party candidate in each district. Foster states that the 13th, 44th, and 65th House Districts were "newly uncompetitive" when they actually had candidates from both major parties. It is because of those types of

party candidate ran unopposed, and in two districts, a major party candidate faced only minor party competition.[29] Of the 27 districts with contested races, a major party candidate won by more than 20% of the vote in 16 races. In three of those contested races, a major party candidate received less than 20% of the vote and, in one of those races, the major party candidate received less than 10% of the vote. Out of 36 state senate races, therefore, only 11 races were considered "competitive" between the major party candidates, i.e., their vote totals were within 20% of one another. Put differently, 70% of the state senate races in 2008 were not competitive.

On the state house side in 2008, 88 out 151 districts were contested by both major parties, two less than in 2006; in 47 districts, a major party candidate ran unopposed, and in 16 districts, a major party candidate faced only minor party competition. Of those 88 districts with contested races, a major party candidate won by more than 20% of the vote in 55 races. In 11 of

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inaccuracies that I did not rely on the parties' representations regarding "net competitiveness," number of minor party candidates, and the like, and instead created my own charts using election results data directly from the Connecticut Secretary of the State website. *See* Appendices A-G.

[29] All the 2008 General Election results were taken from the Connecticut Secretary of the State website *available at* http://www.ct.gov/sots/cwp/view.asp?a=3179&Q=392194&SOTSNav_GID=1846 (last visited August 26, 2009). I have included those election results in Appendices E & F.

the contested races, a major party candidate received less than 20% of the vote; in four of those 11 races, the major party candidate received less than 10% of the vote. Out of 151 state house races, therefore, only 33 races were considered "competitive" between the major party candidates, i.e., their vote totals were within 20% of one another. Put differently, 78% of the state house races in 2008 were not competitive.

Looking at all the General Assembly races in 2008, 72 of 187 races were uncontested by one of the major parties. In addition, in three state races and 11 state house races, a major party candidate received less than 20% of the vote. Thus, in 2008, 86 of 187 (46%) General Assembly races were either uncontested by one of the major parties, or resulted in one of the major party candidates receiving less than 20% of the vote.

In 2008, there were 40 minor party candidates, not including cross-endorsed major party candidates, five fewer than in 2006. Out of those 40 minor party candidates, 14 received less than 3% of the vote; two received between 3% and 3.99%; one received between 4% and 4.99%; eight received between 5% and 9.99%; six received between 10% and 14.99%; four received between 15% and 19.99%; and five received over 20% of the vote. Therefore, in 2010, under the currently enacted CEP, six minor party candidates would be eligible to receive a one-third CEP grant under the prior vote provision; four would be eligible for a two-thirds grant; and five would be eligible for a full CEP grant, provided those candidates, or a

member of their party, succeeds in collecting the necessary number of qualifying contributions.[30]

2. *Statewide elections in 2006*

a. The Major Parties

In the 2006 gubernatorial race, Republican Governor Jodi Rell won reelection with 63.2% of the vote. The Democratic candidate, John DeStefano, received 35.4%.[31] Connecticut Secretary of the State, 2006 Election Results, http://www.ct.gov/sots/cwp/view.asp?a=3188&q=392578 (last visited August 26, 2009). Democrat Susan Bysiewicz won reelection as Secretary of

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[30] The state hastens to add that, due to the cross-endorsement of major party candidates, 12 additional Working Families Party candidates would be eligible for partial or full CEP grants in 2010. March 4, 2009 Proulx Supp. Decl. ¶ 33. The director of the Connecticut Working Families Party, Jon Green, testified at the March 2009 bench trial, however, that getting candidates elected on the Working Families Party ticket is not the principal goal of the party and that the party will likely continue to cross-endorse in the future, rather than take advantage of CEP eligibility. 03/12/09 Tr. at 303-04, 313, 340-41 (testimony of Jon Green).

[31] Because candidates for Governor and Lieutenant Governor run on the same slate in the general election, there are no separate vote totals for Lieutenant Governor. In 2006, Rell's running mate for Lieutenant Governor was Michael Fedele and DeStefano's running mate was Mary Messina Glassman. Connecticut Secretary of the State, 2006 Gubernatorial Election Results, *available at* http://www.ct.gov/sots/cwp/view.asp?a=3188&q=392578 (last visited August 26, 2009).

the State with 69.8% of the vote; her Republican challenger, Richard Abbate, won 26.4%. *Id.* Democrat Denise Nappier won reelection as State Treasurer with 64.4% of the vote; her Republican challenger, Linda Roberts, received 32.0% of the vote. *Id.* In the State Comptroller race, Democrat Nancy Wyman won reelection with 64.4% of the vote; her Republican challenger, Cathy Cook received 31.7%. *Id.* Finally, in the Attorney General race, Democrat Richard Blumenthal won reelection over his Republican challenger Robert Farr, by a margin of 74.8% to 24.2%. *Id.*

b. The Minor Parties

Minor parties have not historically fared well at the statewide level, with the notable exception of Lowell Weicker's 1990 gubernatorial victory as a minor party candidate. In the most recent statewide elections, held in 2006, the Green Party was the only party to run a full slate of candidates for each statewide office. *Id.* The Concerned Citizens Party and the Libertarian Party also fielded candidates for some statewide positions. In the race for Governor and Lieutenant Governor, the Green Party slate won 0.9% of the vote and the Concerned Citizens Party slate won 0.5% of the vote. In the election for Secretary of the State, the Green Party candidate, plaintiff Michael DeRosa, won 1.7% of the vote. The Libertarian and Concerned Citizens candidates won 1.2% and 0.8% of the vote, respectively. In the race for State Treasurer, the Green Party candidate won 1.3%, the Libertarian candidate won 1.5%, and the Concerned Citizens

candidate won 0.8% of the vote. In the State Comptroller race, the Libertarian candidate won 2.3% and the Green Party candidate won 1.5%. Finally, in the Attorney General race, the Green Party candidate won 1.7% of the vote.

The most successful minor party candidate in recent Connecticut electoral history has been Governor Lowell Weicker. Running as a minor party gubernatorial candidate on the A Connecticut Party ticket, Weicker beat his Democratic and Republican opponents with just over 40% of the vote in 1990. Governor Weicker attributes his victory as a minor party candidate in 1990 to the "reservoir of financial and organizational support" that he had accrued over his 30 years in public service. Pl. Ex. A-2, Weicker Decl. ¶ 11. Prior to running for Governor as a minor party candidate, Weicker had served in the Connecticut State House of Representatives, the United States House of Representatives, and the United States Senate as a Republican. *Id.* ¶

2. In his gubernatorial bid, Weicker mobilized over 1,500 supporters to collect the necessary signatures to get on the ballot, eventually collecting approximately 100,000 signatures over the course of two months. *Id.* ¶ 15. For sake of comparison, a minor party candidate seeking a one-third CEP grant in 2010 would need to collect over 110,000 signatures; a full grant would require collecting twice as many signatures as Weicker did, i.e, 200,000. *Id.* Weicker described his network of support as "the broad-based type . . most commonly associated with the party

structure of the major parties." *Id.* ¶ 11. Weicker expresses "no doubt that a lesser candidate without [his] name recognition and political base would fail to collect the hundreds of thousands of signatures necessary to qualify – even for a partial grant." *Id.* ¶ 15.

Significantly for Weicker, he was able to tap into his established base of high-dollar contributors from his years as U.S. Senator, raising over $2.7 million in campaign contributions. *Id.* ¶ 6. Most of those contributions were between $500 and $1000; Weicker "cannot envision" a minor party gubernatorial candidate "collecting the $250,000 in small dollar contributions that is necessary" to qualify for public funding. *Id.* at ¶¶ 16, 18. Weicker further believes that the organization expenditures and matching fund trigger provisions will put minor party candidates who lack "unlimited resources" at a "permanent disadvantage." *Id.* ¶ 26. In Weicker's opinion, those provisions mean that participating candidates are "virtually assured of maintaining a spending advantage" over any self-financed or non-participating minor party candidates. *Id.* ¶ 27. Because the matching funds mean that an independent candidate will never be able to outspend his participating opponent, Weicker believes the outcomes of elections will be affected. *Id.* ¶ 21.

Weicker was the driving force behind the success of the A Connecticut Party. In 1994, its gubernatorial candidate, the incumbent Lieutenant Governor, Eunice Groark, won 19% of

the vote. Pl. Ex. 30 at 4. By 1998, the A Connecticut Party had stopped running candidates for statewide office. *Id.* at 5.

3. *Voter Registration*

As of March 26, 2009, there were 2,091,048 registered voters in Connecticut.[32] March 26, 2009 Notice of Intervenor-Defs.' and Defs.' Submission of Supp. Data Ex. 2, Party Registration, Table 3. Connecticut has 777,061 (37.2%) registered Democrats, 423,630 (20.3%) registered Republicans, and 7,613 (0.4%) registered minor party voters. Notably, unaffiliated voters, at 882,744 (42.2%), comprise the largest group of registered voters in Connecticut.

It is useful to examine the registration statistics on a district-level basis. In 19 out of 36 state senate districts, or 52.8% of such districts, registered Republicans account for less than 20% of the district's registered voters. Five of those districts have less than 10% registered Republicans; in two of those districts, Republicans comprise less than 5% of the registered voters.[33] *Id.* There are no senate districts with less than 20% registered Democrats. In 13 out of 36, or 36.1%, state senate districts, the disparity

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[32] Although Table 3 states there are 2,091,050 registered voters, when added together the number of registered voters actually comes to 2,091,048.

[33] Those districts are the 10th and 23rd Senate Districts, which comprise New Haven and Bridgeport, respectively.

between registered voters of the major parties is greater than 20%, making the dominant party eligible for increased primary grants.

On the house side, in 76 out 151 state house districts, or 50.3%, registered Republicans account for less than 20% of the registered voters. Twenty-two of those districts have less than 10% registered Republicans; in twelve of those districts, Republicans account for less than 5% of the registered voters.[34] *Id.* There are no house districts with less than 20% registered Democrats. In 61 out of 151, or 40.4%, of state house districts, the disparity between registered voters of the major parties is greater than 20%, making candidates from the dominant major party eligible for increased primary grants. *Id.*

In most districts, minor parties account for less than 1% of registered voters; a minor party has greater than 1% of the registered voters in one senate district and eight house districts. No district has more than 2% registered minor party voters.

4. *Campaign Expenditures*

a. Pre-CEP Campaign Expenditures

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[34] Those districts are the 1st, 3rd, 4th, 5th, 7th, 92nd, 93rd, 94th, 95th, 124th, 128th, and 130th House Districts, which comprise Bloomfield, Hartford, New Haven, and Bridgeport, respectively.

In setting the CEP grant levels, the legislature relied on expenditure data from the 2002 statewide contest and the 2004 legislative elections. The CEP expenditure limits (CEP grant plus qualifying contributions) are ostensibly pegged to match the average expenditures in a competitive election, as reported by the Office of Legislative Research ("OLR"). Garfield Decl. II, Ex. 2, Working Group Meeting Tr. 08/11/05 at 85-90 (testimony of Sen. DeFronzo, explaining that the figures were pegged to the average cost of a "contested" race rather than all races).

In 2002, the major party gubernatorial candidates averaged $3,951,096 in expenditures – the Republican candidate, incumbent Governor John Rowland, spent $6,117,067 and the Democratic candidate, Bill Curry, spent $1,785,124. Pl. Ex. 17, OLR Research Report: Campaign Expenditures by Statewide Office Candidates ("OLR Statewide Candidate Expenditure Report"). When setting the CEP grant levels for gubernatorial candidates, the Working Group essentially "threw out the [2002] race" because of the "inordinate" amount of money expended by Rowland and considered the average expenditures over the previous three cycles combined. Garfield Decl. II, Ex. 2, Tr. 08/11/05 Working Group Meeting at 76 (testimony of Sen. DeFronzo). According to the OLR report, the average expenditure for a major party gubernatorial candidate in 1994, 1998, and 2002

was $3,869,023.[35] Pl. Ex. 17, OLR Statewide Candidate Expenditure Report.

The major party candidates for Lieutenant Governor averaged $333,784 in expenditures over the three statewide election cycles from 1994 to 2002. *Id.* Candidates for Secretary of the State averaged $445,696; candidates for State Treasurer averaged $417,133; candidates for State Comptroller averaged $352,262; candidates for Attorney General averaged $260,718. *Id.*

Turning to the 2004 state legislative races, the average candidate expenditure was $65,669.76 for state senate candidates and $16,807.89 for state house candidates. Pl. Ex. 18, OLR Research Report: Campaign Expenditures – 2004 Legislative Races ("OLR 2004 Legislative Campaign Expenditure Report"), at 5-18.[36] The

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[35] In 1998, John Rowland also spent over $6 million ($6,184,102) in his quest for reelection; his Democratic challenger had $2,401,592 in expenditures. Pl. Ex. 17, OLR Statewide Candidate Expenditure Report. In 1994, Rowland spent $4,030,62 and his Democratic challenger spent $2,695,649. *Id.*

[36] The "average" and "median" expenditures for all senate and house candidates reported in Table 4 of the OLR 2004 Legislative Campaign Expenditure Report, Pl. Ex. 18, do not match the average and median of the expenditure amounts reported in Tables 5 and 6. Rather than rely on the erroneous figures in Table 4, using the expenditure data in Table 5 (state senate) and Table 6 (state house), I compiled my own chart to determine the average and median expenditures in 2004. Appendices A & B.

In addition, Table 6 misidentifies Nancy Burton in the 135th House District as an exempt Working Families

median expenditure was $47,415.70 for state senate candidates and $14,210.80 for state house candidates. In state senate races contested by candidates from both major parties, the average expenditure was $74,122.82; the median was $65,898.41.[37] Focusing on the eight state senate races that were "competitive" in 2004, the average expenditure was $114,013.33; the median expenditure was $120,443.35. In the 18 state senate districts with minor party candidates, the average expenditures were $45,954.44; the median expenditures were $33,172.56. In nine, or 25%, senate districts, one or more of the candidates spent in excess of $100,000.00 – the expenditure limit for CEP participating candidates for state senate.

In state house races contested by candidates from both major parties, the average expenditure was $18,741.59; the median was $18,760.[38] Focusing only on those races that were

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candidate, when in fact, she ran on the Green Party ticket and raised $6,325 in campaign contributions. *See* http://www.followthemoney.org/database/StateGlance/statecandidates.phtml?s=CT&y=2004&f=H&so=O&p=6#sorttable (last visited August 26, 2009). Accordingly, I have listed her expenditures as "unavailable" rather than "exempt" in Appendix B.

[37] The figures for this group do not take into account the exempt minor party candidates, the one exempt major party candidate, or the two major party candidates for whom expenditure data was not provided in the OLR Research Report.

[38] The figures for this group do not take into account the exempt minor party candidates, the 16 exempt major party

"competitive," the average expenditure was $21,336.40; the median expenditure was $21,490.99. In the 55 state house districts with minor party candidates in 2004, the average expenditure was $16,933.83; the median expenditures was $13,857.32. There were 24, or 16%, house districts where one or more of the candidates spent in excess of $30,000 – the CEP expenditure limit for participating candidates for state representative.

b. 2006 Legislative Campaign Receipts

Because both the plaintiffs and the state rely on candidate receipts (as opposed to candidate expenditures) for the 2006 election, that is the measure I will use to discuss the 2006 election cycle.[39]

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candidates, or the seven major party candidates for whom expenditure data was not provided in the OLR Research Report.

It is worth noting that I compiled the average and median numbers from the data provided in OLR Research Report: Campaign Expenditures – 2004 Legislative Races, Pl. Ex. 18, not the data relied upon by the state in the July 9, 2008 Declaration of Bethany Foster, which, although purporting to state campaign expenditures, actually relies on candidate receipts (i.e., amount raised) rather than campaign expenditures.

[39] Both sides retrieved their figures from the website www.followthemoney.org. Unless otherwise noted, that is the data I will rely on when discussing the 2006 election cycle.

In 2006, Jodi Rell raised $4,052,687 and her Democratic challenger John DeStefano raised $4,163,548 for both his primary and general election contests. DeStefano's primary challenger, Dan Malloy, raised $3,229,916. The Republican candidate for Lieutenant Governor, Michael Fedele, was nominated by the Republican Party to be Rell's running mate and, therefore, faced no primary contest. Nevertheless, he raised $33,731 to that end. The Democrats had a contested primary for Lieutenant Governor, with the winning candidate raising $565,033 and the losing candidate raising $181,063. The Republican candidate for Secretary of the State, Richard Abbate, raised $48,682; the Democratic incumbent Susan Bysiewicz raised $815,144 for her reelection. Republican Linda Roberts raised $39,005 and Democrat Denise Nappier raised $356,199 in the race for State Treasurer. In the State Comptroller race, the Republican candidate Cathy Cook raised $0 and the incumbent Democratic candidate Nancy Wyman raised $469,285. The Republican candidate for Attorney General, Robert Farr, raised $72,851 and the Democratic incumbent Richard Blumenthal raised $520,676. Combined, the non-gubernatorial slate statewide candidates raised an average of $290,230.25 in 2006. Only one statewide candidate out of the eight (12.5%), raised over the $750,000 general election CEP grant; none of the Republican candidates broke the $100,000 mark.

For the 2006 state senate campaigns, the average amount raised was $71,473.97 for state senate candidates; the median amount raised was

$57,763.50.[40] In the 27 state senate districts that were contested by both major parties, the average amount raised was $75,663.43; the median amount raised was $65,387.[41] In the 10 districts that were considered "competitive" in 2006, the average amount raised by major party candidates was $110,075.10; the median amount raised was $100,721.00. In the 7 state senate districts with minor party candidates, the average amount raised was $68,327.40; the median amount raised was $51,638.50. There were 13 (36%) state senate districts where one or more of the candidates raised campaign contributions of at least $100,000, the CEP expenditure limit for participating state senate candidates.

The average amount raised by state house candidates in 2006 was $20,437.26; the median amount raised was $19,078.00.[42] In the 90 state house districts that were contested by both major

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[40] Disregarding the minor party state senate candidates who did not run as exempt does not significantly alter the average and median receipts for major party state senate candidates in 2006. The average major party candidate raised $72,108.88 in 2006; the median was $59,683.00.

[41] Two major party candidates in those districts claimed exempt status, and therefore, were not included in the averages and medians.

[42] Disregarding the minor party state house candidates who did not run as exempt does not significantly alter the average and median receipts for major party state house candidates in 2006. The average major party candidate raised $20,592.13; the median amount was $19,126.

parties, the average amount raised was $22,106.32; the median amount raised was $21,639.[43] In the 26 "competitive" house races in 2006, the average amount raised was $34,564.29; the median amount raised was $33,337. In the 34 house districts with a minor party candidate, the average amount raised was $16,621.69; the median amount raised was $12,611.50. Only 45 (30%) out 151 state house districts had candidates raise campaign contributions in excess of $30,000, the CEP expenditure limit for participating state house candidates.

According to Garfield, in 2006, designated political action committees ("PACs") and party committees provided $776,532 in "organization expenditures" to state senate candidates.[44] Garfield Decl. III ¶ 26. On average, state senate candidates each received $15,531 in organization

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[43] Eleven major party state house candidates in contested races claimed "exempt" status in 2006, and are not included in these figures.

[44] "Organization expenditures" is a concept introduced by the CFRA. Prior to the introduction of the CFRA's limits on organization expenditures, there were no limits on the amount of monetary and in-kind contributions a party committee or PAC not established by a business entity or a labor union could contribute to a candidate committee. In addition, there were no limits on the number of PACs one individual could establish or control. Garfield Decl. III ¶ 11. To determine the 2006 "organization expenditure" totals, Garfield calculated the monetary and in-kind contributions by party committees and PACs established or controlled by legislative caucuses and legislative leaders or their agents. *Id.* ¶ 19.

expenditures.[45] *Id.* ¶ 27. On the house side, designated PACs and party committees provided $703,452 to candidates for state representative. *Id.* ¶ 26. On average, each candidate for state representative received $3,782 in organization expenditures. *Id.* ¶ 27.

c. 2008 Legislative Campaign Receipts & Expenditures

2008 marked the first election cycle with candidates participating in the CEP public financing scheme.[46] The average receipts for all

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[45] Garfield fails to indicate whether the 2006 total includes both major and minor party candidates; I am assuming that Garfield's 2006 organization expenditure analysis applies only to major party candidates. No chart demonstrating how much each candidate actually received in organization expenditures was provided to the court.

[46] The data on CEP grant disbursements and amount of monies returned following the election, included in Appendices E & F, is drawn from the March 4, 2009 Declaration of Beth Rotman ("March 4, 2009 Rotman Decl."). The graphs attached to that declaration purport to show which candidates participated in the CEP, how much public funding they received, and how much CEP funding they returned after the election was over. That chart is not entirely accurate because the "Grant Monies Released minus Grant Monies Returned" column does not take into account any CEP grant money disbursed for a candidate's primary. The chart also does not take into account the amount in qualifying contributions a candidate must raise in order to become eligible for CEP funding. Nor does the chart indicate whether a primary loser took advantage of the CEP funding; it only includes those candidates who made it to the general election. Also, it does not have any receipt or expenditure data from those candidates not participating in the CEP. Therefore, I have created

state senate candidates was $81,216.83, up 14% from $71,473.97 in 2006. Turning to median receipts, in 2008, the median amount raised by state senate candidates was up 73% to $100,000.00 from $57,763.50 in 2006. Looking at the expenditures for CEP-participating candidates,[47] candidates for state senate who received a CEP grant in 2008 spent, on average, $89,387.85, up 36% from $65,699.76 average expenditure for state senate candidates in 2004. The median amount spent in 2008 by CEP-participating state senate candidates was up 104% to $96,891.65 from $47,415.70, the median amount spent by all state senate candidates in 2004. As a result of CEP participation, there were 27 (75%) senate districts where one or more of the candidates had access to at least $100,000, up from 13 districts in 2006 where the amount of campaign funding available to at least one candidate exceeded $100,000.

Turning to the state house data for 2008, average receipts for all state house candidates was $24,338.06, up 19% from $20,437.26 in 2006.

Appendices E & F, which includes all candidates, their receipts, and their expenditures (receipts minus surplus returned) where available for the 2008 elections. For those candidates who did not participate in the CEP, I took the receipts data from www.followthemoney.org because that website only calculates receipts and not expenditures. Therefore, the "expenditure" data will only be used when analyzing CEP-participating candidates.

[47] Again, the record contains only expenditure data for CEP-participating candidates in 2008.

Median receipts in 2008 were up 57% to $30,000 from $19,078. Looking at CEP-participating candidates' expenditures, the average CEP-participating candidate spent $25,712.14, up 53% from $16,807.89, the average expenditure in 2004. The median amount spent in 2008 by CEP-participating candidates was up 98% to $28,171.11 from $14,210.80. As a result of CEP participation there were 95 (63%) house districts were one or more of the candidates had access to $30,000, up from 45 districts in 2006.

According to Garfield, the amount of organization expenditures for General Assembly candidates in 2008 was well below the 2006 figure due to the restrictions on such expenditures implemented by the CFRA. Garfield Decl. III ¶ 25. In 2008, organization expenditures made on behalf of state senate candidates totaled $253,405, down 68% from 2006. *Id.* ¶ 26. On average, each state senate candidate received $6,849 in organization expenditures.[48] *Id.* ¶ 27. On the state house side, organization expenditures made on behalf of state house candidates totaled approximately $211,081, down 70% from 2006. *Id.* ¶ 26. On average, each

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[48] I assume that Garfield's analysis includes only organization expenditures made on behalf of major party candidates because there are very few minor party committees that actually qualify to make organization expenditures and because he has separated his analysis about such minor party committee organization expenditures in 2008 into a separate section in his declaration. *See* ¶¶ 20-32.

candidate for state representative received $1,649 in organization expenditures. *Id.* ¶ 27. The record does not include a breakdown of organization expenditures by candidate. The section of Garfield's declaration on minor party committee spending does not show precisely how much of the committees' total yearly spending would be designated "organization expenditures" made on behalf of candidates for the General Assembly. *Id.* ¶¶ 29-32. For that reason, I do not find the total yearly expenditures made by individual minor party committees relevant to this analysis.

II. Discussion

A. COUNT ONE: Qualifying Criteria and Public Financing Distribution Formulae

In count one of their amended complaint, plaintiffs challenge the CEP's qualifying criteria for public financing and distribution formulae on the ground that those provisions operate to discriminate against minor party candidates in violation of the First Amendment and the Equal Protection Clause of the Fourteenth Amendment. In *Green Party I*, 537 F. Supp. 2d at 367 n.10, I treated the plaintiffs' First Amendment claim in count one as part and parcel of their Fourteenth Amendment equal protection claim, which treatment the parties have not subsequently disputed. The First Amendment issues raised by the CEP inform the determination whether the CEP operates as an unconstitutional, discriminatory burden on the exercise of fundamental rights. *See Libertarian Party of*

Indiana v. Packard, 741 F.2d 981, 984 n.2 (7th Cir. 1984) (discussing the interplay between the First and Fourteenth Amendments with respect to a similar claim); *Greenberg v. Bolger*, 497 F. Supp. 756, 774-81 (E.D.N.Y. 1980) (in public financing context, analyzing statute under both First Amendment and equal protection jurisprudence); *see also Buckley v. Valeo*, 424 U.S. 1, 92-93 (1976) (initially rejecting plaintiff's First Amendment claim before addressing plaintiffs' Equal Protection claim); *Police Dept. of Chicago v. Mosley*, 408 U.S. 92, 95 (1972) (analyzing picketing ordinance, which affected expressive activity protected by the First Amendment, in terms of the Equal Protection Clause of the Fourteenth Amendment because the ordinance treated picketers differently). *Cf.* Erwin Chemerinsky, Constitutional Law: Principles and Policies 648-49 (2d ed. 2002) (noting that equal protection analysis is sometimes used "if the government discriminates among people as to the exercise of a fundamental right").

My understanding of the plaintiffs' claim in count one is as follows: the CEP's distinctions between major party and minor party candidates are unconstitutional, both facially and as-applied, because those provisions discriminate between candidates with respect to the exercise of their fundamental rights protected under the First Amendment without a compelling state interest for those distinctions; put differently, the CEP's different treatment of major and minor party candidates imposes an unconstitutional, discriminatory burden on minor party candidates'

exercise of fundamental rights for no compelling reason.

1. *Overview*

To reach a decision on the plaintiffs' equal protection challenge to the CEP, I must determine, first, what rights are actually at issue; second, whether the CEP burdens the exercise of those fundamental rights in a discriminatory way; and third, whether, using the requisite level of scrutiny, that burden is justified by the state's proffered interests in enacting the CEP.

The parties do not dispute that the rights at issue in this case – rights of political speech and association and political opportunity – are accurately characterized as "fundamental rights" as that term is generally understood in constitutional jurisprudence.

The parties also do not dispute that, on its face, the CEP sets different qualifying criteria for major and minor party candidates. The first issue in dispute is whether the additional qualifying criteria for minor party candidates operate as a discriminatory burden on the exercise of those rights by minor party candidates. The plaintiffs contend that the CEP burdens the political opportunity of minor party candidates by discriminatorily enhancing the relative strength of major party candidates without imposing any countervailing hardships or disadvantages for participating in the CEP. The state vigorously disputes that the CEP represents any burden on minor party candidates' political opportunity;

according to the state, the relatively weak position of minor party candidates is not the result of any discrimination, the CEP does not reduce minor party candidates' political opportunities or tilt the playing field in favor of major party candidates, and the CEP actually enhances the political opportunity of minor party candidates by providing substantial, transformative benefits through participation in the CEP. Because I conclude that the CEP enhances the relative strength of major party candidates to the detriment of the political opportunity of minor party candidates, as discussed more fully below, I conclude that the CEP imposes a discriminatory burden on minor party candidates' fundamental rights.

Having concluded that the CEP burdens the exercise of fundamental constitutional rights, I must next address the appropriate level of scrutiny. The plaintiffs argue that strict scrutiny applies, meaning the CEP can only survive the constitutional challenge if the state demonstrates it was enacted to further a compelling government interest and that it is a narrowly tailored means for achieving that interest. The state contends that intermediate scrutiny should apply, meaning that the CEP will survive the plaintiffs' constitutional challenge, so long as the state can demonstrate important regulatory interests that are sufficient to justify the discriminatory burden. As explained below, I conclude that strict scrutiny is the appropriate level of scrutiny to apply to the CEP and that the state, although it has successfully proved

compelling government interests, has failed to demonstrate how the CEP is a narrowly tailored means for achieving those interests.

2. *Identification of the Right at Issue*

In count one, plaintiffs allege that the CEP's qualifying criteria and distribution formulae violate the First and Fourteenth Amendments to the United States Constitution because the Act disproportionately burdens the political opportunity of minor party candidates. Am. Compl. ¶ 53. There is no dispute that the CEP touches on political speech rights at the core of First Amendment protection, specifically access to and participation in the political process, i.e., "political opportunity." First articulated in the context of ballot access cases, *e.g.*, *Lubin v. Parish*, 415 U.S. 709, 716 (1974), "political opportunity" represents one aspect of the First Amendment protections of political speech and association. For instance, the *Buckley* Court discussed political opportunity in the context of deciding whether the eligibility formulae for the public financing of presidential campaigns amounted to "a denial of the enhancement of opportunity to communicate with the electorate that the formulae afford eligible candidates," and, thus, whether the public financing scheme amounted to a "restriction[] on access to the electoral process." *Buckley v. Valeo*, 424 U.S. 1, 94-95 (1976). The *Buckley* Court, however, did not further define the nature and scope of the right of political opportunity. Instead, the Court focused the bulk of its analysis on explaining how and

why the federal public financing scheme for presidential campaigns did not impinge on minor party candidates' rights of political opportunity.

In addition, full participation by minor party candidates in the electoral process has long been considered a necessary component of a well-functioning, healthy democratic system, because such candidates and parties challenge established norms and serve as checks on traditional parties and their representatives in government. *Buckley*, 424 U.S. at 96-97 (recognizing there are constitutional restraints against "inhibit[ing] . . . the present opportunity of minor parties to become major political entities if they obtain widespread support" and stating that reducing "the potential fluidity of American political life" would be a detriment to the nation) (internal quotation omitted); *Sweezy v. New Hampshire*, 354 U.S. 234, 250-51 (1957) ("All political ideas cannot and should not be channeled into the programs of our two major parties. History has amply proved the virtue of political activity by minority, dissident groups, who innumerable times have been in the vanguard of democratic thought and whose programs were ultimately accepted."); *Greenberg v. Bolger*, 497 F. Supp. 756, 799 (E.D.N.Y. 1980); *Socialist Workers Party v. Rockefeller*, 314 F. Supp. 984, 989 (S.D.N.Y. 1970) (three-judge court), *aff'd*, 400 U.S. 806 (1970) (noting that the "competition in ideas" offered by minority and dissident political views "is at the core of our electoral process, representative democracy, and First Amendment freedoms").

Because the state is not challenging the plaintiffs' assertion that the CEP's alleged impact on minor party candidates' rights of political opportunity implicates core First Amendment protections of political speech and association, I need not attempt to further define the scope of the right to political opportunity, but will instead focus on the state's argument that the CEP does not burden the plaintiffs' rights, or alternatively, even if it does, that the CEP survives the requisite level of scrutiny because it advances an important or compelling government interest.

3. *Burden on Political Opportunity*

The next issue I must decide is whether the CEP "unfairly or unnecessarily burden[s] the political opportunity of any party or candidate." *Buckley*, 424 U.S. at 96. The plaintiffs have identified six reasons why the qualifying criteria for public funding distort the political playing field in favor of major party candidates, thereby burdening minor party candidates' political opportunity: (1) the use of a statewide proxy for legislative district elections; (2) the provision of windfall grants that far exceed the historical fundraising and spending levels for major party candidates; (3) the provision of primary grants for major party candidates only; (4) onerous qualifying burdens for minor party candidates that operate to virtually shut them out of the public funding scheme; (5) the large disparity in the size of grants disbursed for participating major and minor party candidates who qualify for public funding; and (6) the benefits provided by

the CEP are not off-set by any burden for participating candidates because the CEP does not impose any meaningful expenditure limits. According to the plaintiffs, those six factors combine to burden the political opportunity of minor party candidates.

The state counters that the CEP does nothing to distort or alter the strength of minor party candidates below pre-CEP levels. The state points out that minor party candidates in Connecticut have historically been unable to garner substantial public support and, therefore, the CEP should not be considered a contributing factor to minor parties' relatively narrow appeal. Second, the state contends that political opportunity cannot be considered a "zero sum game" – providing public financing to one candidate does not necessarily reduce the strength of a non-participating opponent. The state primarily argues that the CEP does not diminish the First Amendment-protected right of political opportunity because the plaintiffs have failed to demonstrate that the CEP will diminish minor party candidates' ability to raise funds privately or that it will otherwise alter such candidates' normal course of campaigning. The state also contends that the CEP is merely a substitute for private funding, not a subsidy, and that the plaintiffs cannot prove that, but for the CEP, minor party candidates would not still be materially outspent by major party candidates. The state further argues that, far from being a burden on minor party candidates' political opportunity, the CEP provides the opportunity for

minor party candidates to gain access to far greater amounts of funding than they would otherwise be able to garner, which will make those candidates more competitive and will substantially benefit their party's infrastructure and public visibility. In other words, the state argues that the CEP will transform minor party candidates "from perpetual losers into viable competitors." Defs.' And Intervenor-Defs.' Mem. of Law in Support of Motion for Partial Summary Judgment, at 68.

It is well-established that individuals generally do not have a First Amendment right to government-subsidized speech. *Rosenberger v. Rector & Visitors of the Univ. of Va.*, 515 U.S. 819, 834 (1995) ("the Government is not required to subsidize the exercise of fundamental rights"); *see also Regan v. Taxation with Representation*, 461 U.S. 540, 546, 549-50 (1983) ("We again reject the notion that First Amendment rights are somehow not fully realized unless they are subsidized by the State. . . . 'although government may not place obstacles in the path of a [person's] exercise of . . . freedom of [speech], it need not remove those not of its own creation.'") (quoting *Harris v. McRae*, 448 U.S. 297, 316 (1980)).

When the government enters the arena of political speech, however, it must do so in a way that does not alter the status quo by unfairly and unnecessarily burdening the political opportunity of disfavored minor parties. "[T]he concept that government may restrict the speech of some elements of our society in order to enhance the

relative voice of others in wholly foreign to the First Amendment." *Buckley*, 424 U.S. at 48-49; *see also Schulz v. Williams*, 44 F.3d 48, 60 (2d Cir. 1994) (overturning state statute granting free voter lists to major parties because, although "[t]he State is not required to provide such lists free of charge, . . . when it does so it may not provide them only for the large political parties and deny them to those parties which can least afford to purchase them") (quoting *Socialist Workers Party*, 314 F. Supp. at 996). A public financing law operates to burden the political opportunity of minor party candidates where it "disadvantages nonmajor parties by operating to reduce their strength below that attained without any public financing." *Buckley*, 424 U.S. at 99. One way to calculate the burden on minor party candidates imposed by a public financing scheme is to determine whether the public financing scheme artificially enhances the political opportunity of favored *major* party candidates beyond what it would have been in the absence of public financing, thus altering the political environment in which all candidates compete. *Id.* at 95 n.129.

The state spends significant effort contending that, because the minor parties' political prospects were dim before the CEP, the fact that minor party candidates might continue to do poorly cannot be attributed to the CEP and, therefore, any benefit to major party candidates is not evidence of diminished political opportunity for minor party candidates. Measuring the ability of minor party candidates to get on the ballot,

raise money privately, and attract votes before and after the enactment of the CEP, however, is only one half of the picture. Even assuming that the minor parties' absolute political strength will remain constant, the fact that the public financing scheme artificially enhances major party candidates' fundraising and campaigning abilities without any countervailing disadvantages increases major party candidates' *relative* political strength to the plaintiffs' disadvantage. *See Greenberg*, 497 F. Supp. at 775-76, 778-79; *Socialist Workers Party*, 314 F. Supp. at 995-96.

In *Greenberg*, the Court held that a postal subsidy provided only to major parties was an unconstitutional burden on minor party candidates' exercise of fundamental rights of speech and association, particularly because the major party candidates did not receive any countervailing disadvantage by accepting the discounted postage rate. 497 F. Supp. at 775-76, 778-79, 781. According to the Court, by enacting the postal subsidy the government had impermissibly "chosen to benefit those with popular views and burden those with unpopular views," labeling the subsidy as essentially speech censorship. *Id.* at 776. The fact that minor party candidates continued to pay the same postal rate as before was not a mitigating factor for the Court. "The realities of the process for building financial and popular support for a political party, the integral role played by mailings, and the extremely tight budgetary constraints under which most third and independent parties operate

all mitigate against the proposition that the government could facilitate access for one political party and not necessarily burden all other parties that are in competition with the benefitted party." *Id.* at 778. As the Court reasoned, "in a competitive intellectual environment assistance to one competitor is necessarily a relative burden to the other." *Id.* Finally, the subsidy was distinguishable from the scheme at issue in *Buckley*; because the postal subsidy was "not conditioned on any sacrifice regarding receipt or expenditure of private funds," the discount could not, "in any way, act to the advantage of the non-qualifying parties." *Id.* at 779. *See also Socialist Workers Party*, 314 F. Supp. at 995-96 (invalidating New York statute providing free voter lists to major parties, but not minor party candidates, because the state had failed to demonstrate a "compelling state interest nor even a justifiable purpose for granting what, in effect, is a significant subsidy only to those parties which have the least need therefor").

The following hypothetical is instructive on the issue of changing the "relative" strength of political candidates. Imagine that two candidates are invited to debate their positions before a live audience. At the debate, although both candidates are given equal time to address the audience, answer questions, and respond to points made by their opponent, the debate committee chooses to give only one candidate the benefit of a microphone. Although it is true that the candidate who must speak without a microphone has not had his opportunity to be heard

diminished below what it was prior to the introduction of the microphone – he is still permitted equal time to speak and present his ideas to the audience – it is hard to dispute that his political opportunity is nevertheless burdened by the benefit bestowed upon his opponent who now has an advantage in reaching more of the audience. By giving the opponent a microphone, the debate committee has enhanced the opponent's ability to express and disseminate his or her viewpoints to the electorate. *Cf. First Nat'l Bank of Boston v. Bellotti*, 435 U.S. 765, 784-85 (1978) (noting that "the First Amendment is plainly offended" when the legislature attempts to give one group "an advantage in expressing its views to the people").

The issue is not whether the government may discriminate between major and minor party candidates when crafting a public financing statute – the government certainly has an interest in "not funding hopeless candidacies with large sums of public money, [which] necessarily justifies the withholding of public assistance from candidates without significant public support." *Buckley*, 424 U.S. at 96 (internal citation omitted). The government, however, in creating such a public campaign financing scheme to combat the influence and appearance of corruption in politics, may not simultaneously disadvantage minor party candidates' political opportunity.[49] As the *Buckley* Court recognized,

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[49] Although not directly on point because it does not address a public financing scheme, the Supreme Court's recent

decision in *Davis v. FEC*, __ U.S. __, 128 S. Ct. 2759 (2008), is nevertheless instructive on this issue. The Court struck down the so-called "Millionaire's Amendment," which raised contribution limits for candidates facing high-spending, self-financed opponents, as an unconstitutional burden on the self-financing candidate's speech rights. In doing so, the *Davis* Court affirmed the concept that the government may not infringe on political candidates' First Amendment rights in order to level the playing field between candidates possessing different levels of wealth. *Id.* at 2772-73. The Court held that the government's interest in "'equalizing the relative ability of individuals and groups to influence the outcomes of elections'" was not sufficient to justify raising contribution limits for candidates facing wealthy self-financed opponents. *Id.* at 2773 (quoting *Buckley*, 424 U.S. at 48-49). As the *Davis* Court further noted, "'[t]he concept that government may restrict the speech of some elements of our society in order to enhance the relative voice of others is wholly foreign to the First Amendment.'" *Id.* (quoting *Buckley*, 424 U.S. at 48-49). The Court reiterated that "it is a dangerous business for Congress to use the election laws to influence the voters' choices." *Id.* at 2774 (citing *First Nat'l Bank of Boston v. Bellotti*, 435 U.S. 765, 791 n.31 (1978) (The "[g]overment is forbidden to assume the task of ultimate judgment, lest the people lose their ability to govern themselves.")).

It surely follows that, just as the government is not permitted to level the playing field by removing advantages from certain candidates, it is equally prohibited from advantaging certain candidates, i.e., slanting the playing field, so that it enhances the relative position of one candidate over another. "The argument that a candidate's speech may be restricted in order to 'level electoral opportunities' has ominous implications because it would permit Congress to arrogate the voters' authority to evaluate the strengths of candidates competing for office." *Id.* at 2773.

public financing schemes have the potential "to give an unfair advantage to established parties, thus reducing, to the nation's detriment, the potential fluidity of American political life." *Id.* at 97 (internal alterations and quotations omitted).

In upholding the constitutionality of the federal public financing scheme at issue in *Buckley*, it was significant to the Court that the scheme did not have an effect on the parties' relative standing. Importantly for the *Buckley* Court, the public financing scheme did "not *enhance* the major parties' ability to campaign," but rather "substitute[d] public funding for what the parties would raise privately and additionally impose[d] an expenditure limit." *Id.* at 95 n.129 (emphasis added). Any disadvantage to non-participating minor party candidates was "limited to the claimed denial of the enhancement of opportunity to communicate with the electorate," which was tempered by the scheme's expenditure ceiling for participating candidates, which the Court described as a "countervailing" disadvantage not imposed on non-participating candidates. *Id.* at 95. For that reason, the *Buckley* Court held that the federal public financing scheme for presidential elections was not a burden on ineligible minor party candidates' political opportunity. The CEP is distinguishable from the scheme in *Buckley* precisely because (1) the *Buckley* public financing scheme applied to a single race – the presidential race – which has always been competitive between the major

parties, unlike many state and legislative elections to which the CEP is applicable; (2) the CEP employs a single state-wide proxy to numerous district-wide elections, thus distorting the political strength of the major parties in many districts by disregarding the composition, demographics, and voting history of those particular districts, and (3) the CEP does not impose a true countervailing disadvantage to participating candidates because the expenditure limits are illusory in practice.[50]

There is no question that, on its face, the CEP's qualifying criteria and distribution formulae discriminate between major party candidates and minor party candidates. Minor party candidates who collect the necessary level of qualifying contributions must satisfy a second qualifying threshold before becoming eligible for a CEP grant, and unlike major party candidates who collect the necessary qualifying contributions, may only become eligible for a partial CEP grant. Major party candidates who achieve the qualifying contribution threshold automatically receive a full CEP grant without the need to satisfy any additional qualifying criteria. Because treating major and minor party candidates differently for purposes of public funding is not necessarily unconstitutional, *id.* at 97, the issue becomes whether that

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[50] For a more in-depth discussion on why the scheme at issue in *Buckley* is distinguishable from the CEP, see my ruling in *Green Party I*, 537 F. Supp. 2d at 371-78.

discriminatory treatment provides major party candidates an unfair advantage, thereby enhancing major party candidates' relative strength and thus burdening the minor party candidates' political opportunity. Whether the CEP represents a burden on minor party candidates turns on the following issues: (1) whether the CEP's public funding grants are mere substitutes for what the participating candidates would have raised privately or whether they actually enhance the major party candidates' abilities to campaign beyond their normal capabilities; (2) whether the CEP's expenditure limits represent a true countervailing disadvantage for participating candidates; and (3) whether minor parties have a legitimate shot at qualifying for a CEP grant. In addition, it is necessary to address the state's argument that the CEP enhances the political opportunity of minor party candidates.

I conclude that the CEP enhances the relative strength of major party candidates in ways that represent a severe burden on the political opportunity of minor party candidates for the following reasons: (1) it provides participating major party candidates public financing at windfall levels, well beyond what most major party candidates would typically be able to raise on their own from private fundraising sources; (2) it permits major party candidates who are as equally "hopeless" as minor party candidates in many districts to become eligible for full funding without first requiring such hopeless major party candidates to make the same threshold showing

of public support required of minor party candidates through the additional qualifying criteria; (3) the additional qualifying criteria for minor party candidates are nearly impossible to achieve, thus ensuring that minor party candidates will only very rarely qualify for the "enhancing" benefits made available by CEP participation; and, (4) in the event a minor party candidate does qualify for partial CEP funding, it handicaps that participating minor party candidate by automatically granting full funding to his or her participating major party opponent, and by prohibiting the partially-funded minor party candidate from raising private contributions, up to the full grant amount, in increments greater than $100.

a. Public Financing Grants Are Windfalls Because They Do Not Correspond to Past Candidate Expenditures or Fundraising Levels

The evidence demonstrates that the CEP has dramatically increased the funding and resources of major party candidates well beyond what they have been historically able to raise and spend in any given election, which has led most districts with CEP-participating candidates to become awash in public financing. Pegging the CEP's grant levels to the most competitive races has burdened minor party candidates' political opportunity because, by providing major party

candidates financing in amounts much higher than typical expenditure levels, it slants the political playing field in favor of major party candidates.

Examining past candidate expenditures and receipts for General Assembly seats demonstrates this point. In setting the CEP grant levels and expenditure limits, state legislators relied on 2004 state legislative election data. The CEP expenditure limits – CEP grant plus qualifying contributions – were based on the average expenditures in the most competitive races: $100,000 for state senate candidates ($15,000 in qualifying contributions plus $85,000 CEP grant) and $30,000 for state house candidates ($5,000 in qualifying contributions plus $25,000 CEP grant).

The CEP expenditure limits, however, are well above the average expenditures for all but the most competitive General Assembly races. In 2004, the average expenditure for state senate races contested by both major parties was $74,122.82; the average expenditure for state house races contested by both major parties was $18,741.59. For races considered "competitive" between the major parties, i.e., where the major party candidates' vote totals were within 20% of one another, the average expenditure increased to $114,013.33 for state senate races and $21,336.40 for state house races. Considering all races, however, the average expenditure was $65,669.76 for all state senate candidates and $16,807.89 for all state house candidates; the median amount

expended was $47,415.70 for state senate candidates and $14,210.80 for state house candidates.[51] There can be no dispute that the amount of money available through the CEP exceeds historical amounts expended in most races and, therefore, does not represent a disadvantageous expenditure ceiling for most participating candidates.

Because the CEP purports to be a substitute for private fundraising, it is useful to examine how much General Assembly candidates were able to raise, on average, prior to the enactment of the CEP. For the 2006 state legislative campaigns, the average amount raised was $71,473.97 for state senate candidates and $20,437.26 for state house candidates; the median amount raised was $57,763.50 and $19,078, respectively. Again, those averages and medians are well below the CEP grant plus qualifying contribution levels of $100,000 and $30,000 for state and house candidates, respectively.

When examining contested and competitive districts, the average receipts get closer to the CEP funding levels: in 2006, in the state senate

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[51] Those figures, notably, do not include those candidates claiming exempt status, meaning the candidate pledged he or she would raise and spend less than $1,000 for their campaigns. In 2004, there were 18 major party General Assembly candidates who claimed exempt status; 17 of those candidates ran in contested races against another major party candidate. Obviously, including exempt candidates would only reduce the averages and medians set forth above.

districts contested by both major parties, the average amount raised was $75,663.43; in contested state house districts, the average amount raised was $22,106.32. The CEP grant levels and expenditure limits are pegged to the most expensive and competitive races: in those races where the major party candidates finished within 20% of the vote from one another, i.e, the "competitive" districts in 2006, the average amount raised in those 10 state senate districts was $110,075.10 and the average amount raised in those 26 state house districts was $34,564.29.

Those averages belie the actual fact that, in 2006, most major party General Assembly candidates raised nowhere near the CEP funding levels: only 13 state senate districts, or 36%, had candidates who raised campaign contributions of $100,000 or more; only 45 state house districts, or 30%, had candidates raise in excess of $30,000.

The funding and expenditure statistics from the 2008 General Assembly elections demonstrate how the CEP has injected much more money into state legislative races than was previously spent and raised in prior election cycles. The CEP's effect is readily apparent from the increased number of districts that have candidates with access to significant amounts of campaign funding. Starting with the state senate races, only 13 districts in 2006, or 36% of senate districts, had at least one candidate with access to $100,000 of campaign funding; that number grew to 27 out of 36 districts, or 75%, in 2008. Average receipts for state senate candidates were up 14%

to $81,216.83 from $71,473.97; median receipts were up 73% to $100,000.00 from $57,763.50 in 2006. Even more tellingly, average expenditures for CEP-participating candidates were up 25% to $89,387.85 from $65,669.76, the average amount spent in 2004; median expenditures were up 104% to $96,891.65 from $47,415.70, indicating most CEP-participating candidates are finding ways to expend their entire CEP grant.

The number of house districts where at least one candidate had access to $30,000 in campaign funding grew to 95 out of 151 districts, or 63%, from 45 districts in 2006. Average receipts for state house candidates in 2008 were up 19% to $24,338.06 from $20,437.26; median receipts were up 57% to $30,000 from $19,078. Average expenditures for CEP-participating state house candidates in 2008 were up 53% to $25,712.14 from $16,807.89; median expenditures grew by 98% to $28,171.11 from $14,210.80 in 2004. Like candidates for state senate, participating candidates for state house are finding ways to spend the bulk of their CEP grants.

Buckley's acceptance of the federal public financing scheme at issue in that case was grounded, in large part, on the grants representing true limits to a candidate's expenditures and merely substituting what the candidates would have raised privately. Given the stark contrast between CEP funding and average receipts from major party candidates' previous private fundraising efforts, it is not possible to

characterize the CEP's one-size-fits-all grants as "substituting" rather than "subsidizing" major party candidates' private fundraising capabilities. Furthermore, because the grants are well beyond what is necessary to mount a competitive campaign in most races, the CEP cannot fairly be said to set a true expenditure ceiling either. With so much money now available it has become next to impossible to spend very little money and still run a meaningful campaign. The CEP sets such a high fundraising threshold for nonparticipating candidates that it virtually compels participation in the program by major party candidates, and thus drowns out the voices of minor party candidates who have been historically incapable of raising anything close to full CEP grant levels.

Participating major party candidates facing a major party opponent presumptively qualify for full grants regardless whether that other major party candidate is participating or not. In turn, that major party candidate is incentivized to either participate in the CEP or raise an equivalent amount of money privately. The so-called "reduced" grant level provision for participating major party candidates facing only minor party competition or who run unopposed does not alleviate the funding deluge created by the CEP. Once the minor party candidate raises private contributions that are equal to the qualifying contribution level and/or the minor party candidate becomes eligible for even a partial CEP grant, the participating major party candidate receives the full grant amount. The reduced funding for participating major party

candidates facing minor party competition is applicable, therefore, only in situations where the other major party decides not to contest the district and the minor party candidates raises less than $15,000 in a state senate race and less than $5,000 in a state house race.

Analyzing minor party candidates' historical electoral record, the CEP's funding provisions create an evident paradox for minor party candidates. The evidence demonstrates that minor party candidates have typically been unable to raise money from a wide swath of the electorate. Their success has come most frequently by targeting those fundraising resources in districts where the major party candidate has run unopposed and/or did not spend a sizable amount of money on the campaign. Thus, in 2004, only one minor party candidate for the state senate did not run as "exempt" – plaintiff DeRosa. That year, DeRosa reported $150.08 in campaign expenditures in his race against one major party candidate and another minor party candidate. Despite this lack of fundraising success, in the four election cycles prior to 2008, 33 minor party candidates have received over 10% of the vote. The high levels of funding that the CEP injects into state legislative races has all but eliminated the existence of "low-cost districts" where the cost of mounting a campaign was well under the CEP grant levels. It is unlikely, therefore, that a minor party candidate running a low-cost campaign will be able to replicate anywhere near the same level of success from pre-CEP election cycles.

Comparing the average and median receipts in districts where minor party candidates competed in 2006 with the average and median receipts of the districts where minor party candidates competed in 2008 demonstrates the increase in money, due to the influx of public funding provided by the CEP, in those districts where minor party candidates ran. On average, receipts for state senate districts where minor party candidates ran was up 24% to $84,917.43 in 2008 from $68,327.40 in 2006; median receipts in those districts were up 94% to $100,000.00 in 2008 from $51,638.50 in 2006. There were CEP-participating major party candidates in six out of the seven state senate districts with minor party candidates in 2008. Those CEP-participating candidates in the minor party districts spent, on average, $101,737.86, up 121% from $45,954.44 in average expenditures in districts with minor party candidates in 2004; median expenditures rose 188% to $95,404.21 from $33,172.56 in those districts. Only two out of seven minor party candidates for state senate in 2008 did not run as exempt – plaintiff DeRosa, who collected $150, and Cicero Booker, who qualified for a full CEP grant.

In state house districts with minor party candidates, the average amount raised was up 37% from $16,621.69 in 2006 to $22,819.39 in 2008; the median amount raised was up 138% from $12,611.50 in 2006 to $30,000 in 2008. There were CEP-participating major party candidates in 25 out of the 29 state house districts with minor party candidates in 2008. In 2008, those CEP-

participating candidates spent, on average, $24,118.08, up 42% from $16,933.83 in average expenditures in districts with minor party candidates in 2004; median expenditures rose 65% to $22,851.87 from $13,857.32 in those districts. Twenty out of 33 minor party candidates for state house in 2008 ran as exempt. Of the 13 minor party candidates who did not run as exempt in 2008, three qualified for a partial CEP grant and two for a full CEP grant; the remaining eight minor party candidates averaged $2,376.25 in receipts from private fundraising sources.

Most participating major party candidates receive more money through the CEP than they could have raised privately and are subject to expenditure limits well above the average expenditures in prior election cycles. Thus, at historic minor party fundraising levels, the participating major party candidate's campaign funding and expenditures will increase relative to the minor party candidate's funding and expenditures, thus increasing the major party candidate's relative strength in most districts. The windfall funding enhances participating major party candidates' ability to campaign without any corresponding disadvantage and, therefore, operates as a burden on minor party candidates' political opportunity.

b. The Use of a Statewide Proxy Artificially Enhances Major Party Candidates' Competitiveness

The use of a statewide proxy to determine eligibility for public funding on the legislative district level enhances the relative strength of major party candidates because it does not require them to first demonstrate any threshold of public support in a district before becoming eligible for full funding. In *Bang v. Chase*, 442 F. Supp. 758, 768 (D. Minn. 1977), the Court rejected a distribution method that relied on state-wide party preferences to distribute public campaign funding to candidates at the legislative district level. According to *Bang*, "the aggregate political party preferences expressed by all state taxpayers . . . have no rational relation to the support for particular parties or for particular candidates within legislative districts." The Court concluded that, because the distribution scheme permitted a party with a statewide plurality to "unfairly disadvantage its opponents in those districts where it enjoys little district support," the public financing distribution method "invidiously discriminates between candidates of different political parties and abridges the First Amendment right of political association." *Id.*

Under the CEP, to qualify for the same level of funding as a major party candidate, a minor party candidate must have garnered at least 20% of the total vote in the previous election for that seat or must collect signatures equal to at least 20% of the total vote in the previous election. In one-party-dominant districts, the undisputed evidence demonstrates that not all major party candidates, if subject to the same qualifying criteria, would be automatically

eligible to receive full CEP funding. If the same qualifying criteria applied to major party candidates, in 2008, one of the major party candidates would not have been eligible to receive automatic funding under the CEP in fully 44% of General Assembly districts (82 of 187) because, in 2006, that district was either uncontested by a candidate from that major party or the major party's candidate in the previous election won less than 20% of the vote.

Looking forward to the 2010 General Assembly elections, the same holds true. If major party candidates were required to comply with the qualifying criteria applicable only to minor party candidates, in 2010, one of the major party candidates would not be eligible to receive automatic funding under the CEP in 46% of General Assembly districts (86 of 187) because, in 2008, that district was either uncontested by a candidate from that major party or the major party's candidate in the 2008 election won less than 20% of the vote.

The state would have me summarily conclude that it would be an exercise in futility for the CEP to have required major party candidates to prove their support in those historically uncompetitive and/or uncontested districts because major party candidates will *always* meet the 20% petitioning threshold based on the inherent two-party nature of U.S. elections and the major parties' superior networks and organizational structures. The state, however, fails to acknowledge two fundamental problems

with that assertion. First, in pointing to the major parties' consistent vote totals over 20%, the state is relying on data from 2004 that does not take into account the very districts where the statewide proxy's utility is called into question: those districts abandoned by one of the major parties. Second, and more troubling, the legislature has chosen for its "major party threshold," a prior vote percentage that can be best described as the proverbial "magic number," i.e., a threshold that major parties will almost always reach yet one that the minor parties will almost never reach.[52] There is no reason, however, to believe that achieving a 20% vote threshold is any more predictive of electoral success or, conversely, renders a candidate less "hopeless," than a candidate who garners some statistically lower percentage of the vote.

In 2006, for example, in the 27 of 36 state senate districts that were contested by candidates from both major parties, a major party candidate won by more than 20% of the vote – a landslide margin – in 17, or 62%, of those contested races. Similarly, on the state house side, of the 90 races with two major party candidates, a major party candidate won by more than 20% of the vote in 64, or 71%, of the races with major party competition. Thus, in a significant majority of state legislative districts, the losing major party

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[52] Although Republican Party registration is now perilously close to the 20% threshold, a popular Republican gubernatorial candidate can still save Connecticut from the prospect of having only one major party.

candidate was not "competitive" despite receiving more than 20% of the vote. Certainly those candidates did "better" than their minor party competition, however, they still lost resoundingly to the other major party candidate by any measure of electoral competitiveness. The fact is that, if coming within at least 20% of your opponent can be said to be a "competitive" race, only 28% of state senate races and 17% of state house races were actually competitive, notwithstanding the fact that in non-competitive, contested elections most major party candidates received more than 20% of the total vote.

In further support of their claim that major party candidates will always receive more than 20% of the vote in any race, the state relies on some misleading party identification statistics. Although it is true that less than 1% of *affiliated* voters identify with a minor party rather than a major party, nearly half of Connecticut's registered voters – 42.2% – are unaffiliated with any party, major or minor. On a district-wide basis, one of the major parties – the Republicans – account for less than 20% of registered voters in 19 out of 36, or 52.3%, of state senate districts and in 76 out of 151, or 50.3%, of state house districts. In Hartford, New Haven, and Bridgeport, where Republicans comprise less than 5% of registered voters, the Republican Party is, for all intents and purposes, a minor party.

It is important, therefore, to reiterate the effect of the statewide proxy in state legislative elections: the CEP provides full funding to any

major party candidate who enters any General Assembly election and raises the requisite qualifying contributions, regardless of that candidate's historical odds of competing with any degree of success in that particular district. And, in choosing the magic 20% threshold by which to measure "major" versus "minor" party, the state legislature chose a percentage that would ensure that Democrats and Republicans would remain eligible for full funding under the CEP without having to prove the likelihood of electoral success, while not truly capturing whether that candidate has the requisite electoral support to be "successful."

I reject the state's argument that reputational concerns will temper major parties' desire to seek CEP funding in every district and that major parties' internal vetting processes will ensure that only candidates with a viable shot at winning the election will attempt to qualify for CEP funding so that, therefore, there will be no "hopeless" major party candidates qualifying under the less stringent major party requirements for CEP funding. One need only look at the number of CEP-participating major party candidates who nevertheless lost by landslide margins in 2008. On the state senate side, in the 16 races that were not competitive between the major party candidates, in eight of those districts, the losing major party candidate qualified for a full CEP grant. On the state house side, in the 55 races that were not competitive between the major party candidates, in 32 of

those districts, the losing major party candidate qualified for a full CEP grant.

The parties' own valuation of a candidate as potentially successful does not guarantee that that candidate will receive a commensurate level of support from voters. Using an internal screening process to vet potential candidates to run on a major party ticket is not analogous to having broad public support that renders the additional petitioning or prior success requirements superfluous. As demonstrated by the non-competitiveness of the majority of General Assembly districts, major party candidates are equally capable of falling flat with the electorate, albeit with a higher level of support, as unsuccessful minor party candidates. By favoring those hopeless major party candidates with a statewide proxy and reduced eligibility requirements, which ensures that virtually any and all major party candidates will be able to qualify for full CEP grants regardless of their record of historical failure in certain districts, the CEP favors hopeless major party candidates, thereby artificially enhancing those candidates' ability to campaign. I conclude, therefore, that the CEP substantially enhances the relative strength of major party candidates compared to minor party candidates because it encourages major parties to field candidates for historically uncompetitive seats, without regard to their likelihood of success, by providing full funding with a minimal requirement of collecting the requisite number of qualifying contributions. Based on the high number of uncontested General

Assembly districts in Connecticut, major parties have historically had reason not to field candidates in those one-party-dominant districts, whether it was lack of popular support or difficulty in raising the necessary funds to be competitive. The CEP removes those inhibiting factors without regard to the likelihood of success or the fundraising prowess of major party candidates – the very reasons why the state argues minor party candidates must be subjected to higher standards for qualifying. In doing so, the CEP unfairly favors competition between major party candidates over competition from minor party candidates and thereby burdens the political opportunity of minor party candidates.

c. Additional Qualifying Criteria Make It Unlikely That Minor Party Candidates Will Qualify for Public Funding

Another reason that the CEP impermissibly burdens minor party candidates' right to political opportunity is that the onerous qualifying criteria make it extremely difficult for minor party candidates to become eligible for even partial public funding. For all practical purposes, therefore, the CEP operates as a one-sided benefit for major party candidates only.

In addition to collecting the requisite number of qualifying contributions, minor party candidates must meet one of two additional qualifying criteria that do not apply to major party candidates. A minor party candidate may

qualify for partial or full CEP funding if he or she, or the previous candidate from that party, garnered at least 10%, 15%, or 20% of the total vote from the previous election for that particular seat. If the minor party candidate fails to qualify under the prior success requirement, he or she may attempt to qualify under the petitioning requirement. Under the petitioning requirement, a minor party candidate must collect the signatures of registered voters from that district equal to 10%, 15%, or 20% of the prior vote total for that office.

Very few minor party candidates who ran for the General Assembly between 2002 and 2006 would have been eligible for even partial CEP funding in their subsequent elections under the prior success requirement. In the three election cycles within that period, there were 179 minor party candidates on the ballot, but only 25 of those candidates received at least 10% of the vote. In three election cycles, only four minor party candidates received over 20% of the vote, or approximately one General Assembly candidate per election cycle. As a point of comparison, if 5% was the threshold level for full CEP funding under the prior success requirement,[53] 72 minor party candidates over three election cycles would

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[53] I use 5% as a comparison both because that is the level proposed by Garfield in 2006 as a sufficient safe harbor for CEP eligibility, Pl. Ex. 5 at 2, and because that is the threshold adopted by the federal election program and upheld as constitutional in *Buckley*, 424 U.S. at 103.

have been potentially eligible for a full grant in the subsequent election, or approximately 24 General Assembly candidates per election cycle.[54]

Achieving at least 10% of the vote will only become more difficult for minor party candidates in the future, because the CEP's incentives encourage major party candidates to compete in districts they had previously abandoned, where minor party candidates have historically had their greatest successes. Of the 25 minor party candidates who received over 10% of the vote between 2002 and 2006, 23 ran against only one major party candidate. Similarly, in 2008, of the 15 minor party candidates who received over 10% of the vote, 13 ran against only one major party candidate. With increased competition comes a smaller piece of the electoral pie for all candidates, thus making the 10% threshold even more onerous over time as more districts become contested by candidates from both major parties. *See* Tr. 12/10/08 at 291- 92, 305 (testimony of Donald Green).

Turning to the petitioning requirement, there is convincing evidence that achieving the CEP's 10/15/20% signature gathering threshold is a nearly impossible task given the time and expense of such a petition drive. I begin with the

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[54] Looking forward to 2010, under the CEP as currently written, under the prior vote provision, five minor party candidates would be eligible for a full CEP grant. Under a 5% prior vote requirement, that number would increase to 23 minor party candidates.

number of signatures that are actually required to qualify under the CEP's petitioning requirement. The state's petitioning expert, Harold Hubschman, advises that a successful petition campaign would need to collect 150% of the threshold number of signatures in order to have a sufficient cushion against signature invalidity. Hubschman Supplemental Decl. at ¶ 9. Based on the 2008 voter turnout, a minor party candidate for state senate petitioning to qualify for a one-third grant in 2010 would need to collect between 2,352 and 5,427 valid signatures of registered voters, depending on the district. Table 6 to the Narain Decl. Using Hubschman's extra 50% cushion, to successfully qualify for the lowest level of CEP funding, a candidate would, as a practical matter, need to collect between 3,528 and 8,141 signatures of registered voters in that district. To qualify for a *full* CEP grant, using the 150% guide, a successful minor party candidate would need to collect between 7,056 and 16,283 valid signatures. On the state house side, using the 150% rule of thumb, to qualify for a one-third grant in 2010 a minor party candidate would need to collect between 489 and 2,075 signatures and between 980 and 4,149 signatures for a full grant, depending on the district. On the senate side, the average number of signatures needed to qualify for a one-third grant is 3,958 and 7,916 for a full grant. On the house side, the average number of signatures needed to qualify for a one-third grant is 918 and 1,836 for a full grant. Table 6 to the Narain Decl. At the statewide level in 2010, a minor party gubernatorial candidate, using the

150% guide, would need to collect 168,511 signatures to qualify for a one-third grant and 337,024 for a full grant.

As a matter of comparison, in his 1990 gubernatorial bid, Governor Weicker collected just 100,000 signatures by deploying an unprecedented 1500-plus volunteers working in all 169 towns in Connecticut. Pl. Ex. A-2, Weicker Decl. ¶¶ 9,15. Weicker credits the success of his campaign to his "broad-based type of organizational support that is most commonly associated with the party structure of major parties." *Id.* at ¶ 11. If 100,000 signatures was a Herculean feat for Governor Weicker, who was the most successful minor party candidate in the history of the state, and who was a major public figure with a 30-year record as an elected official and a major party-like organizational structure, it is difficult to see how any minor party gubernatorial candidate will come close to qualifying for even a one-third CEP grant.

In most cases, to successfully collect the requisite number of signatures, a minor party candidate would need to hire paid petitioners at between $1.00 and $2.00 per signature. Hubschman opined that a "reasonably well organized" minor party candidate should have equivalent success with a band of dedicated, unpaid volunteers. Hubschman Supp. Decl. at ¶7. There are several reasons, however, why that opinion is not convincing. First, the state does not seriously contest the notion that petition campaigns generally employ paid petitioners; at

the bench trial, the state's other expert, Donald Green, conceded that most petition campaigns would need to hire paid petitioners at $1.50 to $2.00 per signature in order to meet the petitioning requirement. Tr. 12/10/08 at 320, 323, 325-28 (testimony of Donald Green). Second, Hubschman's hypothesis regarding the ease of using unpaid volunteers is based solely on petition drives he has been hired to conduct on behalf of major party candidates; he has never been involved in any petition campaign for a minor party candidate other than Joe Lieberman, who was an incumbent Democratic senator at the time of the petitioning drive, with the attendant name recognition and established base of supporters. Pl. Ex. 32, Hubschman Dep. at 44. Therefore, Hubschman does not have any knowledge about the unique difficulties facing minor party candidates seeking to connect with members of the electorate, without name recognition or major party identification to help them. Third, the state has urged in other portions of its briefing, and I agreed in my findings of fact, that minor parties generally lack established organizational structures. Therefore, it is unlikely that a minor party could ever mount a sufficiently well-organized campaign to collect the necessary signatures in the time period allotted, i.e., between January and August of an election year. I will, therefore, continue my analysis under the premise that qualifying under the CEP petitioning requirement would require hiring paid signature gatherers.

At $1.00 to $2.00 per signature, the minor party candidate for state senate would need to spend, on average, $3,958 to $7,916 to collect enough signatures to have a shot at qualifying for a one-third grant. To qualify for a full grant, the minor party candidate for state senate would need to spend $7,916 to $15,832. These figures are consistent with the experience of minor party candidates, as demonstrated by the efforts of Cicero Booker, the Working Families candidate in the 15th Senate District who qualified for a full CEP grant in 2008. According to Jon Green, the director of the Connecticut Working Families Party, Booker needed to collect 2,703 valid signatures to qualify for a full CEP grant; his campaign actually submitted in excess of 5,300 signatures. Jon Green Supp. Decl. ¶ 8. As of September 4, 2008, Booker's campaign had spent $9,210 for a professional canvassing service to collect CEP petition signatures and to raise Booker's qualifying contributions.[55] *Id.* ¶ 9. According to Jon Green, out of that $9,210, the cost of gathering signatures was $3,010, which works out to approximately $1.75 per signature. *Id.*

The cost of a petitioning campaign highlights the next difficulty faced by minor party candidates: the CEP's prohibition on permitting professional canvassing services or other

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[55] Notably, Booker spent an additional $75,990 on his canvassing service, Citizen's Services, Inc., before the end of the 2008 election cycle. Pl. Exs. 106 & 109.

consultants hired to help qualify for CEP funding to work "on spec," i.e., "with hopes of but no assurance of payment." Random House Webster's Unabridged Dictionary (2d ed. 1998). Under the SEEC's regulations, "it is impermissible for a participating candidate to bargain for and accept services with the understanding that he or she will receive those services no matter what but will pay for them, in part or in full, only if the candidate qualifies for a grant." March 10, 2009 Rotman Decl. ¶ 8 (citing Conn. Agencies Reg. § 9-706-2(b)(16)). Although the regulation does not require the candidate to pay up front, and therefore candidates may incur a short-term debt to the canvassing service, the candidate is obligated to eventually pay for the services rendered, out of personal funds, if the candidate fails to qualify for the CEP. *Id.* According to the state's own expert, Professor Donald Green, the reasonableness of the CEP's petitioning requirement is contingent upon the ability of petitioning candidates to hire consulting services on spec. Tr. 12/10/09 at 322-26. Because candidates seeking to qualify for the CEP are prohibited from hiring consultants and paid petitioners to work on spec, even the state's own expert believes that the qualifying criteria are not reasonable.[56] Furthermore, because seeking a

[56] It appears that Professor Green's thesis that the CEP's thresholds for funding eligibility are reasonable and do not create unrealistic obstacles for participation by minor party candidates, is founded upon the belief that the CEP grants will provide incentives for the creation of a "cottage industry" of political consultants "whose main role will be to

CEP grant limits the amount of money a candidate can collect from individuals – up to $100 – in order to qualify for CEP funding by satisfying the petitioning requirement, a minor party candidate must be willing and able to pay thousands of dollars in personal funds to canvassing services in the event he or she fails to

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facilitate [minor party candidates'] qualifying campaigns." Tr. 12/10/09 at 281-82. Green testified that the prospect of a significant grant will make it worth it for consultants to agree to work on behalf of a minor party candidate seeking to qualify for the CEP. *Id.* at 325. As he explained, "the qualification threshold is just de minimis . . . especially since the state is effectively subsidizing it." *Id.* at 306. "[A] [consulting] firm would be quite happy, I'm sure, to do it on spec. [The firms'] expected value is the probability that they'll meet the requirements times the number of dollars that they'll receive should they meet the requirement *minus the risk associated with not getting paid*." *Id.* at 323 (emphasis added). As Green's testimony revealed, however, he was unaware that the CEP prohibits candidates from hiring consulting services "on spec:"

> GREEN: [T]o the extent that [the consulting service] would charge you, say, $20,000 to conduct this campaign, or $15,000 to conduct the campaign and bill you after you've gotten the CEP grant, you would be . . . well to look in terms of that transaction.
>
> Q: And if that option you just described was, in fact, illegal, . . . your opinion would change about the reasonableness of the qualifying criteria?
>
> GREEN: Yes, if it were, but I do not believe that it is. *Id.* at 325. In fact, according to SEEC regulations, the CEP prohibits candidates from entering contracts for services that are contingent upon the receipt of a CEP grant. March 10, 2009 Rotman Decl. ¶ 8 (citing Conn. Agencies Reg. § 9-706-2(b)(16)).

garner enough signatures and qualifying contributions to qualify for a partial or full CEP grant.[57]

Putting the cost of gathering signatures aside, there are several further difficulties that every petitioning minor party candidate seeking to qualify for public funding must face, regardless whether they are relying on paid petitioners or volunteers. First, Connecticut does not require private property owners or merchants, such as grocery stores, to give access to their property to signature gatherers. Hubschman Decl. ¶ 22. Yet the most efficient location to collect signatures, according to petitioning expert Hubschman, is outside a grocery store. *Id.* Therefore, if private property owners elect not to permit petitioners on their property, the process of petitioning becomes more time-consuming by forcing petitioners to go door-to-door or to collect signatures outside less trafficked, public locations such as post offices or commuter rail stations. Second, unlike unknown major party candidates who benefit from widespread party identification among voters, minor party candidates cannot draw on a wide

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[57] I am mindful that the unsuccessful minor party candidate also would have the option to attempt to retire his campaign debt with a fundraising drive after the election. Given the difficulty that even high-profile candidates have had with the process of retiring campaign debt, I do not believe this would be a feasible way for unsuccessful minor party candidates to escape using personal funds to pay for the petitioning services.

base of latent support among the electorate – there is no dispute that gathering signatures on behalf of a Democrat or a Republican is easier to do than for a minor party candidate. Therefore, the process of collecting signatures for minor party candidates requires more effort with a lower chance of success. That lack of latent support is compounded by the problem that supporters of the major party candidate who is ideologically closer to the minor party candidate will lack the incentive to sign a petition for the minor party candidate to obtain CEP funding if that candidate has the potential to siphon votes from their preferred candidate. This leaves the petitioning minor party candidate with the prospect of collecting signatures equal to 15%-30% of the vote from substantially less than 100% of the electorate, which, realistically, is daunting if not impossible. To put this in context, in Connecticut, to get on the ballot as a gubernatorial candidate, a candidate must gather 7,500 from registered voters statewide. Conn. Gen. Stat. § 9-453d. In contrast, to qualify for CEP funding, a state senate candidate must collect, on average, even more signatures – 7,916 – from within a single senatorial district.[58]

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[58] I would also point out that the pool from which qualifying contributions can be collected is much larger than the pool from which signatures can be gathered. Although qualifying contributions – which the major party candidates are also required to collect in order to become eligible for CEP funding – may come from mere "residents" of their district, a minor party candidate seeking to qualify for a CEP grant under the petitioning requirement must collect signatures

The state defends the CEP's qualifying criteria as not insurmountable, pointing to the five minor party candidates who managed to qualify for partial or full funding grants in 2008. Although a handful of minor party candidates have managed to surmount the very high qualifying criteria, that fact does nothing to diminish the substantial burden facing minor party candidates who wish to qualify for CEP funds. Moreover, that burden necessarily focuses a minor party candidate on the task of qualifying for the CEP rather than the activities of campaigning.

The additional qualifying criteria imposed on minor party candidates set nearly impossible hurdles in the path of minor party candidates, unduly burdening minor party candidates seeking to qualify for CEP funds. Without the prospect of meaningful minor party participation, the CEP operates as a benefit conferred only on major parties, thus burdening minor party candidates' political opportunity.

d. The CEP's Discriminatory Funding Scheme Discourages Minor Party Participation

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from a (necessarily) smaller pool of registered voters from that district. *Compare* Conn. Gen. Stat. § 9-704 (stating qualifying contributions must come from a certain number of "individuals residing" in the state or district) *with* Conn. Gen. Stat. § 9-705(c)(2), (g)(2) (stating signatures must come from "qualified electors").

Finally, the CEP's distribution scheme itself discourages minor parties from even trying to qualify for CEP funding. Where a participating major party candidate is running against only a non-participating minor party candidate who has raised private donations totaling less than the qualifying contribution amount for that office, the participating major party candidate is eligible for a reduced CEP grant worth only 60% of the full grant amount. Conn. Gen. Stat. § 9- 705(j)(4). As soon as the minor party candidate qualifies for a partial CEP grant or privately collects contributions equal to the qualifying contribution amount for that office, however, the participating major party candidates's grant is automatically increased to the full amount.[59] The participating minor party candidate, however, is only able to seek additional funding up to the full grant amount by collecting private campaign donations of $100 or less. Therefore, even if the minor party candidate is successful at raising the necessary amount in qualifying contributions, he or she has the incentive to forgo public funding and continue to raise private contributions that would not be subject to the same strict $100 contribution limit based on his or her opponent's increased funding. Conversely, minor party candidates have an incentive to collect less than the threshold qualifying contribution amount and forgo

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[59] In other words, a minor party candidate who qualifies for 33.3% CEP funding triggers his opponent's receipt of an additional 40% CEP grant.

participation in the CEP in order to keep their major party opponents' grant amount at 60%. For example, if a minor party candidate for state house keeps his or her contributions below $5,000, his or her major party opponent will only be eligible for a $15,000 grant. As soon as the minor party candidate reaches the $5,000 threshold, his or her opponent's public funding shoots to $25,000, making it that much more difficult for the minor party candidate to wage an effective campaign against his publicly-funded opponent. Therefore, the minor party candidate faces a strong incentive to avoid raising contributions in excess of $5,000, whether or not that candidate hopes to become eligible for the CEP.

e. Conclusion on the Issue of Burden

For those foregoing reasons, I conclude that, the CEP operates as a subsidy for major party candidates by enhancing their relative strength beyond their past ability to fundraise and campaign, without imposing any countervailing disadvantages or requirements on participants. Accordingly, both individually and collectively, the aspects of the CEP discussed above severely burden minor party candidates' political opportunity. The state's argument that the CEP represents a transformative opportunity for minor party candidates fails because too few minor party candidates can qualify for even a partial grant or have the incentive to do so.

4. *Applicable Level of Scrutiny*

Having concluded that the CEP burdens the fundamental rights of minor party candidates, I must now determine what level of scrutiny to apply in determining whether that burden is nevertheless constitutional. The plaintiffs urge that I apply strict scrutiny as I did in my ruling denying the state's motion to dismiss, arguing that campaign finance regulations are subject to strict scrutiny. The state contends that the appropriate level of scrutiny is determined using the Supreme Court's test set forth in the election law and ballot access cases of *Anderson v. Celebrezze*, 460 U.S. 780 (1983), and *Burdick v. Takushi*, 504 U.S. 428 (1992). The state argues that, under the *Anderson-Burdick* balancing test, because the plaintiffs have failed to demonstrate that the CEP represents a "severe" burden on their First Amendment rights, intermediate scrutiny must apply.

Because the *Anderson-Burdick* line of decisions focuses on whether a state's election and ballot access laws have impermissibly burdened the rights of *voters* to associate or to choose among candidates, rather than the speech rights of *candidates* affected by campaign finance regulations, the balancing test set forth in those cases is not applicable here. In *Burdick*, a voter challenged Hawaii's prohibition on write-in voting, 504 U.S. at 430; *Anderson* involved a challenge by several voters to Ohio's early filing deadline for independent candidates' seeking to be placed on the general election ballot. 460 U.S.

at 782-83. The *Burdick* Court acknowledged that voting was "of the most fundamental significance under our constitutional structure," but declined to hold that strict scrutiny must apply in every case challenging election laws that burden voters' rights because it "would tie the hands of States seeking to assure that elections are operated equitably and efficiently." 504 U.S. at 433. Because achieving legitimacy for the democratic electoral process requires balancing the rights of voters to have freedom of choice and association with the need for order and efficiency in running elections, the *Burdick* Court, citing *Anderson*, concluded that a more deferential and "flexible" standard applied to challenges to state election laws. *Id.* at 434. In such cases, a court "must weigh 'the character and magnitude of the asserted injury to the rights protected by the First and Fourteenth Amendments that the plaintiff seeks to vindicate' against 'the precise interests put forward by the State as justifications for the burden imposed by its rule,' taking into consideration 'the extent to which those interests make it necessary to burden the plaintiff's rights.'" *Id.* (quoting *Anderson*, 460 U.S. at 789). Necessarily, the extent to which the challenged regulation burdened the voters' First and Fourteenth Amendment rights dictated the level of scrutiny that should apply. *Id.*

Those cases simply have no bearing on the issues presented by this challenge to Connecticut's public campaign financing law by minor parties and minor party candidates. Accordingly, I decline to apply the *Anderson*-

Burdick test and conclude, instead, that "exacting scrutiny," i.e., strict scrutiny, should apply given the significant impact the CEP has on minor party candidates' political speech rights.[60] *See, e.g., Daggett v. Comm'n on Gov't Ethics & Election Practices*, 205 F.3d 445, 466 (1st Cir. 2000) (applying strict scrutiny to Maine's public campaign financing law); *Rosenstiel v. Rodriguez*, 101 F.3d 1544, 1553 (8th Cir. 1996) (applying strict scrutiny to Minnesota's public financing law). Therefore, the CEP will survive the plaintiffs' constitutional challenge only if the government can demonstrate that it is narrowly tailored to further a compelling government interest.

5. *Government Interest*

The state contends that the CEP, with its statutory preference for major party candidates, serves five separate, but related, compelling government interests: to eliminate actual and perceived corruption, to free candidates and elected officials from the burden of political

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[60] Even if I am wrong and the *Anderson-Burdick* test is the appropriate way to determine the level of scrutiny that must be applied in this case, I would still conclude that the plaintiffs have satisfied their burden of demonstrating the CEP is a "severe" burden on their right of political opportunity, and therefore, strict scrutiny would nevertheless apply. *See Burdick*, 504 U.S. at 434 (noting that, where the rights protected under the First and Fourteenth Amendments are subject to "severe restrictions," the "regulation must be narrowly drawn to advance a state interest of compelling importance") (internal quotation omitted).

fundraising, to encourage a significant level of candidate participation in the public financing program, to protect the public fisc, and to avoid providing incentives for the creation of splintered parties and unrestrained factionalism.

The plaintiffs do not seriously dispute that the prevention of actual and perceived corruption in state politics is a well-recognized compelling government interest. *Rosenstiel*, 101 F.3d at 1553; *Republican Nat'l Comm. v. FEC*, 487 F. Supp. 280, 284-85 (S.D.N.Y. 1980). As I stated in *Green Party I*, 537 F. Supp. 2d at 379, the CEP is designed to serve the interest of eliminating the appearance of corruption by encouraging candidates for state office to abstain from raising private donations, the traditional source of political contributions and logical basis of potential corruption, in exchange for public funding. As a corollary interest, courts have recognized that freeing candidates' time, which would otherwise be devoted to private fundraising, to engage in a competitive debate or discussion of the issues is also a compelling state interest advanced by a public financing scheme. *Rosenstiel*, 101 F.3d at 1553; *Republican Nat'l Comm. v. FEC*, 487 F. Supp. at 284-85. Courts have also recognized that a state has a compelling interest in encouraging candidate participation in the public financing program. *Rosenstiel*, 101 F.3d at 1553 (citing cases). Finally, the *Buckley* Court recognized that the government has at least an important public interest in protecting the public fisc by "not funding hopeless candidacies" and "against providing artificial incentives to

splintered parties and unrestrained factionalism." *Buckley*, 424 U.S. at 96 (internal quotation omitted). Although *Buckley* identified those last two interests as "important," rather than "compelling," because it does not affect my decision in this case, I will treat those interests as compelling state interests for purposes of this ruling.

As a final note, the rationale for treating minor party and major party candidates differently for purposes of CEP eligibility, which operates as a burden on those candidates' fundamental rights protected under the First Amendment, "must be genuine, not hypothesized or invented *post hoc* in response to litigation." *United States v. Virginia*, 518 U.S. 515, 533 (1996); *Weinberger v. Wiesenfeld*, 420 U.S. 636, 648 n.16 (1975) ("This Court need not in equal protection cases accept at face value assertions of legislative purposes, when an examination of the legislative scheme and its history demonstrates that the asserted purpose could not have been a goal of the legislation.").

6. Narrow Tailoring

In order to survive strict scrutiny, the state must successfully demonstrate that the CEP is narrowly tailored to further the compelling government interests outlined above. *John Doe, Inc. v. Mukasey*, 549 F.3d 861, 878 (2d Cir. 2008) (citing *United States v. Playboy Entertainment Group, Inc.*, 529 U.S. 803, 813 (2000), and *Reno v. ACLU*, 521 U.S. 844, 874 (1997)). If the CEP

either does not advance those interests, or there are less restrictive means for achieving those interests that do not infringe so severely on the political opportunity of minor party candidates, it cannot survive strict scrutiny. *Id.*

There can be no dispute that a public financing scheme, generally speaking, serves a compelling state interest in removing actual and perceived corruption by cutting off avenues for influence by eliminating the need for, and opportunity to make, large campaign contributions. Certainly no state lawmakers have admitted to being unduly influenced by contributors who make significant donations to their campaigns. No such admission is necessary. There exists a natural connection in the public's mind between large contributions and increased influence and access to lawmakers, which a public financing system goes a long way towards eliminating. The state is to be commended for the on-going efforts to reverse the state's "Corrupticut" public image wrought by the recent corruption scandals detailed above. Nothing in this opinion should be taken as criticizing the state's overall effort to improve the electorate's perception of state government by enacting far-reaching anti-corruption legislation. Efforts to improve the transparency and integrity of the political process serve to strengthen our system of representative democracy. *Buckley*, 424 U.S. at 26-27 (on the constitutionality of contribution limits, noting that "[t]o the extent that large contributions are given to secure a political quid pro quo from current and potential office holders,

the integrity of our system of representative democracy is undermined"). Connecticut is at the forefront of such efforts and should be proud of the new legacy it is creating with its campaign finance reform efforts.

The issue, therefore, is not whether a public financing scheme can further the compelling state interest of reducing actual and perceived corruption; it certainly can do that. It is also beyond doubt that a public financing scheme can free candidates and elected officials from the burden of political fundraising and, therefore, can engage more directly with voters and each other in debating the pertinent issues. Rather, the issue is whether the particulars of the public financing scheme, i.e., requiring minor party candidates to undertake additional qualifying criteria and, in turn, setting what those thresholds would be, are appropriately tailored to further the state's compelling interests. For example, the state argues that it chose to require minor party candidates to undertake additional qualifying criteria before becoming eligible for a CEP grant because it wanted to prevent a raid on the public fisc. The constitutionality of the CEP, therefore, will turn on whether it has been narrowly tailored to achieve that interest.

a. Different Qualifying Criteria for Major and Minor Party Candidates

The state first asserts that the additional qualifying criteria for minor parties are necessary

to protect the public fisc. Certainly the state, when distributing public funds, may set requirements for candidates to prove "some preliminary showing of a significant modicum of support." *Buckley*, 424 U.S. at 96. The state, however, has chosen to require major and minor party candidates to submit to different requirements in order to prove that necessary modicum of support before receiving public financing. According to the state, in the absence of sufficiently high qualification and eligibility standards, many minor party candidates with little or no chance of winning election to office could qualify for funding, thus squandering public monies on hopeless candidacies. By requiring the minor party candidates to prove a demonstrated ability to attract voters and run a competitive race through the prior success or petitioning requirements, the state argues it ensures that the public funding will not be wasted on candidates without a true chance of winning the election.

Of course, this argument relies on the proposition that the two major parties have equal standing, bases of support, and history of success across all electoral districts so that it would be administratively burdensome and unnecessary for major party candidates also to satisfy those preliminary eligibility thresholds. The evidence demonstrates that that proposition is demonstrably false. Connecticut has historically been comprised of one-party-dominant districts, meaning one of the major parties consistently wins office, causing the other major party to

either abandon the district or run candidates who lose by landslide margins.

The 2006 elections represent a good snapshot of the pre-CEP electoral landscape in Connecticut. Out of 36 state senate districts, only 27 were contested by candidates from both major parties. Of those 27 districts, one of the major party candidates won by a landslide – more than 20% of the vote – in 17 races. Thus, in only 10 senate districts, or 28%, did the major parties get within 20% of the vote of one another. On the state house side, 90 out of 151 districts had candidates from both major parties. Of those 90 races, one of the major party candidates won by a landslide margin in 64 races. Thus, in only 26 house districts, or 17%, did the major parties run competitively against one another. Furthermore, in three state senate races and nine state house races, one of the major party candidates received less than 20% of the vote, not to mention the nine state senate districts and 61 state house districts where one of the major parties did not run a candidate at all. Therefore, in 44% of the General Assembly districts, 82 of 187, one of the major parties would not have qualified for automatic, full CEP funding in 2008 if major party candidates were subjected to the same qualifying criteria as minor party candidates. The 2008 election results demonstrate that, in the 2010 elections, in 46% of General Assembly districts, a major party candidate would not be eligible to receive automatic funding under the CEP if subjected to the minor party candidates' qualifying criteria.

The evidence of major parties' superior organization and internal vetting process is not enough to overcome that marked deficit of support across so many districts. Although a major party under the CEP is any party that has more than 20% of the state's registered voters or that won more than 20% of the vote in the previous gubernatorial election, those definitions do not hold true on a district-wide level, particularly in a state where a plurality of the state's voters are registered as "unaffiliated." In 53% of state senate districts and 50% of state house districts, Republicans account for less than 20% of registered voters.

Furthermore, even if name recognition and latent party identification are enough to push the non-dominant major party candidate over the magic 20% threshold most of the time, no matter which district the candidate runs in, there is no evidence in the record that suggests why using a 20% threshold is the appropriate arbiter of electoral competitiveness. In a district where a Democrat beats his or her Republican opponent 75% to 25%, no one would argue that the Republican candidate's vote total represented a realistic chance of winning or even a showing of significant strength.[61] Rather, one would consider

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[61] This also illustrates the fallacy of the state's explanation that the CEP has high qualifying thresholds for minor party candidates because the aim of the CEP is to provide public funding only for candidates who have a realistic chance of winning an election. If that were truly the aim of the CEP, it would have to use much higher thresholds of 40% or 45%, applied to both major and minor party candidates, in order

that Republican candidate just as unlikely to win an election as a candidate achieving only 5% of the vote. Both of those candidates are, for all intents and purposes, "hopeless" candidates, and yet the CEP gives the 25% vote-earner a tremendous advantage in the next election.

The evidence demonstrates that major parties are just as capable of running hopeless candidates as minor parties. The state, however, has failed to demonstrate how its interest in protecting the public fisc is served by treating hopeless minor party candidates differently from hopeless major party candidates. In fact, it is more likely that favoring hopeless major party candidates over hopeless minor party candidates will result in a raid on the public fisc because it is easier for such candidates to become eligible for public financing and because more hopeless major party candidates than hopeless minor party candidates run for office. There is no evidence to suggest that major parties will self-regulate and run only those candidates who have a true chance of success in a particular district; in fact, the non-dominant major party has no incentive to accept the status quo in such a district. Major parties have every incentive to run candidates as

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to ensure that only candidates with a legitimate chance of winning an election would receive a grant. Because the CEP currently funds many major party candidates who have no realistic chance of winning, the state cannot claim with a straight face that the CEP is only meant to fund candidates with a legitimate shot at winning an election.

challengers to entrenched incumbents in one-party-dominant districts, even with no hope of actually winning, as part of a long-term effort to build candidate and party recognition over time in a particular district, i.e., to use free public monies to slowly chip away at the dominant party's foothold. In that scenario, not only is the major party is using public financing to fund its party-building efforts, but with more major party candidates incentivized to run, more public funds are being expended.

Next, the state argues that it is necessary to subject minor party candidates to more rigorous eligibility requirements in order to avoid splintered parties and unrestrained factionalism. Any measure aimed at preventing splintered parties and unrestrained factionalism, however, must be narrowly crafted to avoid drowning out the independent, third party voices in the marketplace of ideas. *See Greenberg*, 497 F. Supp. at 764, 768-72 (discussing the tension between preventing factionalism and the historical value such third parties have played in developing new policies and challenging established norms).

The state has not explained why the CEP's qualifying contributions and additional qualifying criteria, as written, are necessary to achieve the state's interest in preventing a rise of factionalism and splintered parties from taking advantage of the CEP. It is true that a handful of the legislature's Working Group expressed concern that third parties could be used to destabilize support for the other major party

candidate or engage in other abusive electioneering tactics. Garfield Decl. II, Ex. 4 at 121 (statement of Sen. DeFronzo); *id.* at 123 (statement of Rep. McCluskey); *id.* at 128 (statement of Rep. O'Brien); *id.* at 130 (statement of Rep. Caruso); Garfield Decl. I, Ex. 19 at 74 (statement of Rep. McCluskey). The state, however, has failed to present anything beyond those theoretical concerns about the potential for factionalism and splintered parties; put simply, there is no evidence in the record to suggest that the thresholds and additional qualifying criteria for minor party candidates are necessary to prevent the hypothetical doomsday predictions of unrestrained factionalism from becoming a reality.

When the Working Group was presented with testimony by the administrators of the Maine and Arizona public financing schemes, which both operate on a party-neutral basis – meaning major party and minor party candidates are subject to identical qualifying criteria – neither administrator reported having a problem with splintered parties or factionalism. *See* Garfield Decl. I, Ex. 19 at 5-93 (testimony of Barbara Lubin and Jonathan Wayne). Rather, each testified that the problems each state had experienced with administering its program involved corrupt or inappropriate uses of public financing, rather than candidates seeking to splinter parties or generate destabilizing factionalism. *Id.* at 26-27 (testimony of Barbara Lubin); *id.* at 28, 57 (testimony of Jonathan Wayne). An updated report about Maine's clean

election program from state senator Peter Mills does not report any problems with factionalism or splintered parties; instead, the problems that have surfaced in Maine all involve the misuse of public funds for personal or other corrupt purposes. Mills Decl. ¶ 14. Similarly, in a declaration submitted in November 2008, the Executive Director of the Maine Commission on Governmental Ethics and Election Practices, Jonathan Wayne, reports that Maine has recently experienced some abuses of its system, including at least three instances where campaign consultants attempted to recruit candidates to qualify for public funding so that they could take substantial commissions from those public grants. November 26, 2008 Wayne Decl. ¶¶ 7, 10. Those problems, again, deal with corrupt uses of public funding, not attempts by major parties to run stalking-horse candidates[62] in order to game the system and split the vote for their preferred candidate or a splinter group seeking to use the public funding for its own party-building efforts. Even defendant Garfield, testifying before the Government Administration and Elections Committee following passage of the first version of the CEP, assured lawmakers that Arizona and

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[62] A stalking-horse candidate is "a political candidate used to conceal the candidacy of a more important figure or to draw votes from and cause the defeat of a rival." Random House Webster's Unabridged Dictionary (2d ed. 1998). It is worth noting that the stalking-horse candidate problem is relevant only in especially competitive races, not a common scenario in Connecticut.

Maine had experienced no problems with factionalism or splintered parties. Garfield Decl. II, Ex. 4 at 129.

The only evidentiary source presented by the state in support of its argument that having easier qualifying criteria for minor party candidates would lead to more stalking-horse candidates is a declaration from Jackie Thrasher, an incumbent Democratic candidate for the Arizona House of Representatives in 2008. In her declaration, Thrasher claims that her Green Party opponent was actually a Republican in disguise, egged on by her Republican opponents to draw votes from her. December 2, 2008 Thrasher Decl. ¶ 8.[63] Even taking Thrasher's speculative theory as true, i.e., that the Green Party opponent in her race was a stalking-horse candidate who entered the race to help ensure Thrasher's defeat as the Democratic candidate, that would be the only example of such conduct in Arizona or Maine in the ten-plus years those states have had a public financing scheme in place. Thrasher's declaration contains no information regarding whether or not the "pseudo" Green Party candidate would have been prevented from qualifying for public funding under more stringent qualifying requirements such as Connecticut's – the only relevant issue.

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[63] I excluded the fifth sentence in paragraph eight as inadmissible hearsay because it was based on information read in a newspaper article, rather than her own personal knowledge. 12/10/08 Tr. at 258-59.

Presumably, a determined stalking-horse candidate, with sufficient under-the-table backing from a major party, would be well-equipped to surmount any obstacle erected by a public financing program. One example in the ten years of Arizona's public financing program is not sufficient establish that the program's lack of additional qualifying criteria for minor party candidates has lead to increased factionalism, splintered parties, and stalking-horse problems so that Connecticut's additional qualifying criteria are necessary to combating those issues.

There is simply no evidence in the record to support the argument that the additional qualifying criteria for minor party candidates are a narrowly tailored way to further the state's interest of limiting the growth of factionalism or splintered parties.

In short, the state has failed to demonstrate how treating major and minor party candidates differently for purposes of CEP eligibility furthers its stated interests for doing so – protecting the public fisc and preventing factionalism.

b. 10/15/20% Thresholds

Even assuming the use of different qualifying criteria for major and minor parties is not necessarily unconstitutional, notwithstanding the failure of such criteria to further either of the state's proffered compelling interests, the next question is whether the eligibility thresholds set

by the qualifying criteria are narrowly tailored. In order to qualify for a one-third CEP grant, a minor party candidate, after collecting the necessary qualifying contributions, must have won at least 10% of the vote from the prior election or collected enough signatures of qualified electors to equal 10% of the prior election's vote total. To qualify for a two-third grant, that threshold jumps to 15% for both requirements; to qualify for a full grant, the threshold jumps again to 20%. Again the state claims the 10/15/20% thresholds further the compelling interests of protecting the public fisc and preventing the rise of factionalism and splintered parties by requiring minor party candidates to demonstrate they have a sufficient base of public support and a chance of winning election to office. The plaintiffs argue that the state's interests could have been achieved using, at most, thresholds of 3/4/5% for one-third, two-third, and full grants, respectively, and that, therefore, the 10/15/20% thresholds are not sufficiently narrowly tailored.

The state relies on Professor Green's opinion that the 20% threshold is not unreasonable and that it is a satisfactory threshold for determining a modicum of popular support and electability. Professor Green's testimony about the "de minimus" nature of the CEP's 20% threshold was undermined by his insistence that the qualifying criteria threshold had to be set high enough to prevent embarrassing, fiscally corrupt candidates who might undermine the electorate's opinion about

the integrity of the public financing system and so-called stalking-horse candidates. 12/10/08 Tr. at 279, 306. If the 10/15/20% thresholds are truly a de minimus requirement for minor party candidates to achieve, then they cannot logically also keep out stalking-horse candidates or those candidates seeking to use the funds for personal gain. *Id.* at 342. The state cannot have it both ways: it cannot claim that the high thresholds are necessary to prevent the entry of candidates who will not run legitimate campaigns, while simultaneously holding up the thresholds as remarkably easy for any reasonably competent candidate to surpass.

The state's purpose in enacting the 10/15/20% thresholds, over the 3/4/5% thresholds recommended by Garfield, becomes even more dubious when considering what the legislature actually relied upon in setting those thresholds. First, the General Assembly's joint Government Administration and Elections Committee was presented with testimony from defendant Garfield that a safe harbor of 5%, along with the requisite qualifying contribution requirement, would be sufficient to achieve the state's purpose of restricting hopeless candidates' access to CEP funding. *See* Garfield Decl. II, Ex. 4 at 118. Second, when asked at the bench trial what the legislature had consulted when setting the 10/15/20% threshold, defense counsel cited an OLR Research Report entitled Past Performance of Petitioning and Minor Party Candidates in Connecticut. 12/10/08 Tr. at 393-94; Pl. Ex. 30. Notwithstanding the fact that the report

postdates the passage of the CEP, and was presumably submitted as part of the legislative review of proposed amendments in March 2006, that report details the vote totals for the 168 minor party candidates who ran for the General Assembly between 2000 and 2004.[64] Pl. Ex. 30. The report states that 77 candidates received less than 3% of the vote; 15 received between 3% and 3.99%; 14 received between 4% and 4.99%; and 61 candidates received more than 5% of the vote. *Id.* More specifically, 12 minor party candidates received between 10% and 14.99%; six between 15% and 19.99%; and four received over 20% of the vote. *Id.* Therefore, over three election cycles, according to the report, under the present qualifying criteria thresholds only 22 minor party candidates would have been eligible for even a partial CEP grant and, of those 22 candidates, only four would qualify for a full CEP grant.

It is not difficult to discern from this report that the legislature essentially set the threshold

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[64] As explained above, the OLR Report includes four extra minor party candidates for state senate in 2002. Because the legislature presumably relied on the summary in the report rather than consulting the report's tables that reveal the discrepancy, for purposes of discussing the sources consulted by the legislature when considering the additional qualifying criteria for minor party candidates, I will use the figures reported in the OLR report's summary. In truth, there were 74, not 77, minor party candidates who received less than 2.99% of the vote and 11, not 12, minor party candidates who received between 10% and 14.99% of the vote in 2000, 2002, and 2004. Pl. Ex. 30, comparing summary on page 2 with the Tables on pages 6 to 12.

criteria at the level guaranteed to ensure extremely minimal minor party participation in the CEP. Faced with a choice of providing full CEP funding to an average of 20 minor party General Assembly candidates per election cycle versus 1.33 minor candidates per cycle, the legislature chose the latter. That decision raises the specter of major party entrenchment – by setting a 20% prior vote total threshold, the General Assembly ensured that virtually no minor party candidates would be eligible for CEP funding under the prior success requirement. At the same time, the legislature picked a threshold of "strength" that major party candidates would always be able to reach – provided they could rely on the state-wide vote total proxy, rather than a district-based prior vote total, to get around abandoned districts in which they have a prior vote total of zero.

Although the Supreme Court has recognized the political reality that electoral districts within the United States operate in a two-party system, it has historically rejected attempts by the legislature to solidify the Democrats and Republicans as *the* two parties. In *Williams v. Rhodes*, 393 U.S. 23, 24-25, 34 (1968), the Court rejected, as a violation of the Equal Protection Clause, Ohio's ballot access law requiring minor parties to collect signatures equal to 15% of the prior gubernatorial election in order to have their presidential candidates placed on the ballot. Although the Court recognized that the state has an interest in promoting the stability afforded by a two-party system, the ballot access

law tended to favor not just a two-party system, but "two particular parties – the Republicans and the Democrats," effectively giving those parties "a complete monopoly." *Id.* at 32. Noting that "[c]ompetition in ideas and governmental policies is at the core of our electoral process and of the First Amendment freedoms," the Court concluded that there was "no reason why two parties should retain a permanent monopoly on the right to have people vote for or against them." *Id.* In other words, although a state cannot be faulted for designing its electoral regulations within the parameters of a two-party system, it does not get to choose which two parties to favor. Although the state is not obligated to fund all candidates equally, it may not design a public financing scheme that effectively treats hopeless major party candidates more favorably than hopeless minor party candidates. In doing so, the state has effectively passed a law that will have the effect of entrenching the political strength of the two current major parties, the Democrats and Republicans, when the evidence provides little support for treating those two parties equally in every district.

Turning back to the question of tailoring, i.e., whether the 10/15/20% thresholds are narrowly tailored to achieve the dual interests of protecting the public fisc and preventing splintered parties and unrestrained factionalism, there is no evidence to suggest that those two interests would not be equally well-served by lower thresholds, such as the 3/4/5% thresholds recommended by the SEEC in March 2006. To the

contrary, "a safe harbor is attained with a 5% standard that could be satisfied either with 5% of total votes cast for the office at the preceding election, or a 5% additional petition signature requirement for such candidates." Pl. Ex. 5, Written Testimony of Jeffrey Garfield before the March 13, 2006 GAE Committee Hearing, at 2.

Finally, most evidence in the record supports the conclusion that the CEP could further the compelling state interests even without requiring minor party candidates to submit to additional qualifying criteria. There is compelling evidence to suggest that the fundraising criteria set by the qualifying contribution requirement alone would present a significant hurdle for most minor party candidates to overcome. The evidence in the record demonstrates that minor party candidates have had little success in fundraising generally; historically most minor party candidates have run as "exempt." In 2006, for example, only two minor party candidates for state representative did not claim exempt status, raising $4,283 and $1,125, respectively, still below the $5,000 qualifying contribution threshold for state house candidates seeking to qualify for the CEP. Only one minor party candidate for state senate in 2006 did not claim exempt status, raising $600, well below the $15,000 qualifying contribution amount. Only in 2004 did a handful of minor party candidates have successful fundraising efforts. In 2004, at least nine minor candidates for state representative raised over $1,000, with six of those candidates raising over $5,000 and two of

those in excess of $10,000. On the state senate side in 2004, minor party candidates fared less well in their fundraising efforts, with only three candidates claiming nonexempt status and only one candidate actually raising more than $1,000.

The state has repeatedly asserted that the minor parties do not deserve to be treated equally to major parties based, in part, on the minor parties' alleged incompetence when it comes to fundraising. Taking the state's proposition that minor parties are not capable of significant fundraising as true, the state could have easily set much lower thresholds to achieve its purported purpose of ensuring that only viable candidates would be eligible for public funding. The pre-CEP data demonstrate that minor party candidates' fundraising efforts were not so significant to suggest that setting a party-neutral qualifying contribution threshold would not be challenge enough for minor party candidates seeking to demonstrate their electoral bona fides.

Furthermore, the Maine and Arizona programs studied by the General Assembly prior to passing the CEP, which both operate on a party-neutral basis, demonstrate that such programs do not create raids on the public fisc or the threat of splintered parties. For that reason, they are appropriately considered less restrictive alternatives to the CEP, as currently written.

(i). Maine[65]

In 1996, Maine voters approved the Maine Clean Elections Act, Me. Rev. Stat. tit. 21-A §§ 1121, *et seq.* ("Maine Act"), which created a voluntary system of public funding in which candidates for Governor, state senate, and state house may elect to participate. Me. Rev. Stat. tit. 21-A § 1122. To qualify for public funds under the Maine Act, all candidates, regardless of party affiliation, must raise a certain amount of "qualifying contributions." Me. Rev. Stat. tit. 21-A § 1124(3). A qualifying contribution is a $5 donation to the Maine Clean Election Fund made by registered voters within that district. Me. Rev. Stat. tit. 21-A § 1122(7). Candidates for Governor must obtain at least 3,250 qualifying contributions, candidates for state senate must obtain at least 150 qualifying contributions, and candidates for state house of representatives must obtain 50 qualifying contributions. Me. Rev. Stat. tit. 21-A § 1125(3). Once the candidate raises the required number of qualifying contributions, the candidate is qualified to receive public funds, as long as the candidate has complied, and continues to comply, with the Act's other provisions. Me. Rev. Stat. tit. 21-A

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[65] For a more in-depth description of the Maine and Arizona clean election programs and the various constitutional challenges that have been mounted against those programs, as well as a description of the public financing programs in place in North Carolina, Minnesota, Massachusetts, Vermont, and others, *see Green Party I*, 537 F. Supp. 2d at 381-90.

§ 1125(5). The Maine Act is party-neutral; it has no prior success formula, and imposes no other qualifying criteria only on minor party candidates.

The amount of public funds that a participating candidate will receive depends upon whether the election is contested or uncontested and how much candidates spent, on average, over the prior two election cycles. Me. Rev. Stat. tit. 21-A §§ 1125(8)(C), (8)(D).

The Maine Act differs from the CEP in at least two respects. First, the Maine Act contains no distinctions between major party candidates and minor party candidates; all candidates are treated equally regardless of party affiliation. Second, the amount of public funds available to participating candidates is not one-size-fits-all like the CEP, which sets the amount of funding based on the most competitive and expensive races in the state. Instead, the amount of public funding depends on the average amount of campaign expenditures from the prior two election cycles for that office. *Daggett v. Commission on Governmental Ethics & Election Practices*, 205 F.3d 445, 451 (1st Cir. 2000).

(ii). Arizona

In 1998, Arizona voters adopted, as an initiative, the Citizens Clean Elections Act, Ariz. Rev. Stat. §§ 16-901, *et seq.* ("Arizona Act"), which created a voluntary system of public funding in which candidates for Governor, Secretary of State, Attorney General, Treasurer,

Superintendent of Public Instruction, Corporation Commissioner, Mine Inspector, and state legislature may elect to participate. *See* Ariz. Rev. Stat. § 16-950(D). To qualify for public funds, all candidates, regardless of party affiliation, must raise a certain amount of "qualifying contributions." Ariz. Rev. Stat. § 16-950. Qualifying contributions are defined as a $5 donation to the candidate's election fund. Ariz. Rev. Stat. § 16-946. Once the candidate raises the required qualifying contributions, which vary depending upon the office sought,[66] the candidate is qualified to receive public funds as long as the candidate has complied, and continues to comply, with the Act's other provisions. Ariz. Rev. Stat. § 16-950. The Arizona Act is substantially party-neutral; it has no prior success formula, and imposes no other qualifying criteria only on minor party candidates.

Although the Arizona Act's qualifying criteria are similar to those of the Maine Act, the distribution formulas differ slightly. Instead of averaging the amounts spent in prior elections and setting a specific value for the gubernatorial

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[66] Candidates for Governor must obtain 4,000 qualifying contributions, candidates for Secretary of State and Attorney General must obtain 2,000 qualifying contribution, candidates for Treasurer, Superintendent of Public Instruction and Corporation Commissioner must obtain 1,500 qualifying contributions, candidates for mine inspector must obtain 500 qualifying contributions, and candidates for the legislature must obtain 200 qualifying contributions. Ariz. Rev. Stat. § 16-950(D).

race, the Arizona Act sets specific values for each election and adjusts those values to account for inflation. Ariz. Rev. Stat. § 16-959.[67] Like the Maine Act, the Arizona Act adjusts for uncompetitive districts. Ariz. Rev. Stat. § 16-952. Unlike the Maine Act, however, the Arizona Act does not reduce a participating candidate's general election grant in a "one-party-dominant"[68]

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[67] The specific grants for the primary and general elections are set forth in a table compiled by the Secretary of State. Ariz. Rev. Stat. §§ 16-959, 16-961(H).

It worth comparing Connecticut's grant amounts to the grant amounts provided under the Arizona public financing scheme. The spending limits for the 2008 elections under the Arizona Act are as follows: $736,410 for the Governor; $155,042 for Secretary of the State; $155,042 for Attorney General; $77,513 for Treasurer; and $19,382 for legislature. Ariz. Rev. Stat. §§ 16-959, 16-961(H). In contrast, the expenditure limits under the CEP are: $3.25 million for Governor; $825,000 for Secretary of the State, Attorney General, and State Treasurer; $100,000 for state senator; and $30,000 for state representative. Conn. Gen. Stat. § 9-705(a)(2), (b)(2), (e)(2), (f)(2).

The disparity between Connecticut's limits and Arizona's limits is particularly stark given the fact that Arizona (approximately 6.3 million people) has almost twice the population as Connecticut (approximately 3.5 million people), and that Arizona (113,998 square miles) is more than 20 times the geographic size of Connecticut (5,543 square miles).

[68] The Arizona Act defines "a one-party-dominant legislative district" as "a district in which the number of registered voters exceeds the number of registered voters registered to each of the other parties by an amount at least as high as ten percent of the total number of voters registered in the district." Ariz. Rev. Stat. § 16-952(D).

race, but rather, gives the candidate the option to reallocate a portion of the candidate's general election funds to the primary election. Ariz. Rev. Stat. § 16-952(D). Finally, the Arizona Act also makes some distinctions in distributions based upon party status. It provides that qualifying independent candidates receive a grant equal to 70% of the sum of the original primary election spending limit and the original general election spending limit. Ariz. Rev. Stat. § 16-951. That lump sum is distributed at the beginning of the primary season and may be used in both primary and general elections. *Id.* Notably this "reduced" grant amount applies only to truly independent candidates, i.e., those candidates not running as the nominee of a party on the official ballot. *See* Arizona Citizens Clean Elections Commission, Participating Candidate Guide: 2007-2008 Election Cycle, *available at* http://azcleanelections.gov/Libraries/2007-2008-docs/Participating_Candidate_Guide.sflb.ashx (last visited August 27, 2009). Minor parties are treated the same as major parties for purposes of the Arizona Act. Ariz. Rev. Stat. § 16-951.

c. Grant Amounts

Finally, the state defends the CEP grant amounts as necessary to encourage a significant level of candidate participation in the public financing program. As described above, however, those funding levels are set much higher than historic levels for all but the most expensive

campaigns. The level of funding provided to candidates is well above the amount raised and expended during the average campaign; it is worth noting, additionally, that those averages do not take into account the lack of fundraising or expenditures in those districts abandoned by one of the major parties. The evidence suggests that the CEP provides funding at levels well beyond the fundraising capabilities of even most major party candidates, and therefore, well beyond what is necessary to encourage a significant level of candidate participation. Furthermore, financing campaigns at platinum levels is contrary to the state's purported interest in protecting the public fisc. If the state were truly concerned about limiting the amount of money it disburses pursuant to the CEP, it could well have established lower thresholds of public grants, which would not overwhelm the modest campaigns of non-participating minor party candidates and yet still attract significant levels of participation. Money is not the only factor that encourages candidate participation in a public financing scheme – as demonstrated by the legislators' testimony in support of the CFRA, having more time to campaign on the issues rather than fundraising and being able to tout one's freedom from the influence and control of special interests are also attractive incentives achieved by participation in a public financing scheme.

7. Conclusion re: Count One

For the foregoing reasons, I conclude that the CEP imposes a severe, discriminatory burden on the political opportunity of minor party candidates and, despite presenting compelling government interests, the state has failed to demonstrate how the CEP is narrowly tailored to advance those government interests. During the bench trial in this case, the state advocated strictly delineating the evidence relevant to the plaintiffs' facial challenge from the evidence relevant to their as-applied challenge. I believe most of the evidence presented is relevant to both challenges.

To succeed on their facial challenge, the plaintiffs' must demonstrate that the CEP's burden on their political opportunity is apparent on the face of the statute.[69] In an as-applied challenge the plaintiffs must demonstrate that the perceived burden really exists in practice, i.e.,

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[69] In most First Amendment cases challenging a statute or regulation, the inquiry is whether the law is unconstitutional in all its applications, *Washington State Grange v. Washington State Republican Party*, __ U.S. __, 128 S. Ct. 1184, 1190 (2008), or "because 'a substantial number' of its applications are unconstitutional." *Id.* at 1190 n.6 (quoting *New York v. Ferber*, 458 U.S. 747, 769-71 (1982)). This is not a case where the state has argued that the plaintiffs are interpreting the statute too broadly or that there are alternative, constitutional constructions of the CEP. Here, there is no dispute regarding the construction of the statute. Accepting the state's interpretation of the statute and how it actually operates in practice, the CEP operates to burden the fundamental rights of minor party candidates.

the CEP, as applied, actually does burden the political opportunity of minor party candidates. I believe that the plaintiffs have met their heavy burden of demonstrating that the CEP is unconstitutional both on its face and as applied, because they have successfully demonstrated how and why the CEP's burden on the political opportunity of minor party candidates is apparent on the CEP's face, and have shown, through the evidence of the 2008 election cycle, and in particular, the large amount of campaign funding granted to major party candidates by the CEP, that the CEP actually severely burdens the political opportunity of minor party candidates.

The state argues that the plaintiffs cannot prevail in their as-applied challenge unless they demonstrate how the CEP has diminished the political strength of minor party candidates.[70] The

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[70] The state also argues that the Supreme Court's recent decisions in *Washington State Grange*, 128 S. Ct. at 1191, and *Crawford v. Marion County Election Board*, __ U.S. __, 128 S. Ct. 1610, 1621-23 (2008), exhibit a strong distaste for facial challenges over as-applied challenges, and that I should, therefore, disregard the plaintiffs' facial challenge entirely in favor of the as-applied challenge. Beyond the obvious distinguishing feature – both decisions addressed election laws, rather than a campaign finance law – neither case forecloses my consideration of the plaintiffs' facial challenge. In *Crawford*, there is no mention of as-applied challenges, let alone a preference for them. 128 S. Ct. at 1621-23. In the sections highlighted by the state, the Court was merely concluding that the plaintiffs had failed to meet the burden required for facial challenges. *Id.* In *Washington State Grange*, the Court stated that facial challenges are "disfavored" because they "often rest on speculation" and "raise the risk of 'premature interpretation

state focuses on the fact that there was no significant difference in the number of minor party candidates or the average percentage of the vote they garnered from 2006 to 2008. The state's focus on absolute numbers, however, is misplaced. The issue in this case is the effect of the CEP on the parties' relative strengths.

Regardless of the ballot access, fundraising results, and vote outcomes in 2008, the CEP, in

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of statutes on the basis of actually barebones records.'" 128 S. Ct. at 1191 (quoting *Sabri v. United States*, 541 U.S. 600, 609 (2004)). First, although the Court did note the difficulty of mounting successful facial challenges, the Supreme Court did not squarely reject the concept of facial challenges. *Id.* Second, the Supreme Court's concerns are simply not a factor in this case. In *Washington State*, the law had yet to be enacted and the harm – that voters would be confused by the new ballot rules – was entirely speculative. *Id.* at 1193-94. In this case, not only does the law expressly discriminate in its treatment of major party and minor party candidates, but it was operating during the most recent election cycle, and most significantly, the plaintiffs' theory has been well supported by a full record, including the results of the 2008 election. Considering Connecticut's electoral history as a party-dominant state, the effects of a public financing system, which on its face: (1) employs a statewide proxy as the basis for distributing public funding, (2) distributes windfall grants, and (3) operates for the benefit of primarily major party candidates, cannot be legitimately characterized as speculative. Furthermore, because I conclude that the plaintiffs have met their burden for establishing both their facial and as-applied challenges, the state's argument that I refrain from considering the facial challenge in favor of the as-applied challenge is moot.

fact, funneled large amounts of money to major party candidates in 2008, thus dramatically enhancing their relative ability to reach the electorate beyond their past ability to raise contributions and campaign, but without any countervailing disadvantage to those participating candidates. As a result, the relative strength of the major party candidates has been dramatically increased and the relative strength of the minor party candidates has been dramatically diminished. The facts show that, in 2008, major party candidates received and spent public funds at windfall levels; the statewide proxy permitted hopeless major party candidates to easily qualify for CEP funding despite poor or non-existent levels of public support in their own districts; that the CEP's additional qualifying criteria are extremely onerous because very few minor party candidates are eligible under the prior success requirement and the alternative petitioning requirement is nearly impossible to achieve; and the CEP contains incentives for minor party candidates to forgo raising large amounts of campaign contributions or qualifying for CEP funding lest their major party opponents receive even larger public grants. Therefore, as explained more fully above, I conclude that the facts demonstrate that the CEP actually burdened the political opportunity of the minor party and minor party candidate plaintiffs in 2008. Accordingly, the CEP is both facially unconstitutional and unconstitutional as-applied to the plaintiffs.

B. COUNTS TWO AND THREE: CEP Trigger Provisions[71]

In counts two and three, the plaintiffs allege that the CEP's excess expenditure and independent expenditure trigger provisions, which release additional grant money to participating candidates under certain circumstances, violate the First Amendment rights of non-candidates, non-participating candidates, and their supporters. According to the plaintiffs, the trigger provisions act as de facto expenditure limits on non-participating candidates and non-candidates by discouraging such persons from engaging in constitutionally protected First Amendment expression for fear of releasing additional campaign funding to their political opponent or disfavored candidate.

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[71] Counts two and three of the plaintiffs' amended complaint are best understood as alternative challenges to the specific CEP trigger provisions in the event their all-encompassing challenge to the CEP is rejected. I will decide the plaintiffs' alternative constitutional challenges to forestall a remand in the event my ruling on count one is reversed on appeal.

I previously granted the state's motion to dismiss counts two and three in *Green Party I*, 537 F. Supp. 2d at 391-92. The plaintiffs moved for reconsideration of my ruling following the Supreme Court's decision in *Davis v. FEC*, 128 S. Ct. 2759 (2008). On October 10, 2008, I granted the plaintiffs' motion for reconsideration and vacated my order dismissing those counts. The state now seeks summary judgment on counts two and three on the ground that the plaintiffs lack standing to challenge the trigger provisions. Alternatively, the state contends that the provisions survive strict scrutiny because they are narrowly tailored to further the state's compelling interests in incentivizing participation in the CEP and protecting the public fisc by keeping down the value of the initial CEP grants. Because the parties have submitted trial briefs on counts two and three and have had the opportunity to argue the merits of their positions on those counts at the bench trial held in December 2008 and March 2009, I will consider the claims raised by counts two and three on the merits, rather than under the summary judgment standard of review.

1. *Factual Background*

a. Excess Expenditure Trigger Provision

The CEP's excess expenditure trigger provision provides matching funds to participating candidates who face a high-spending non-participating candidate. Conn. Gen. Stat. § 9-713. Under section 9-713, a participating

candidate receives additional primary or general election grants once the non-participating candidate spends, or receives contributions, in excess of the participating candidate's expenditure limit, i.e., the amount of qualifying contributions plus CEP grant for that particular office. *Id.* Once the non-participating candidate spends or receives contributions in amounts equal to 100%, 125%, 150%, and 175% of the participating candidate's expenditure limits, matching funds are released in grants equal to 25% of the original CEP grant. *Id.* at § 9-713(a)(1)-(4). Accordingly, the participating candidate is eligible to receive up to four matching fund grants in additional funding, totaling 100% of his or her original CEP grant amount, under the excess expenditure provision. *Id.* For example, if a non-participating candidate for state house spends or receives contributions of one dollar over $30,000, the participating candidate would receive $6,250 in matching funds, 25% of $25,000, to spend immediately. If the non-participating candidate then spends or receives contributions that exceed $37,500, the participating candidate receives another $6,250 grant, and so on.

Whether the excess expenditure provision has been triggered is determined by looking at the non-participating candidate's individual receipts and expenditures; in other words, the excess expenditure provision is triggered only if the expenditures and/or receipts of one candidate exceed the expenditure limit for the participating candidate. In the event that there are multiple

non-participating candidates in a single race, those candidates' expenditures and receipts are not aggregated together for the purposes of determining whether the excess expenditure provision has been triggered. *See* Tr. 12/10/08 at 243-49 (counsel for the Attorney General representing that section 9-713 does not provide for aggregation across multiple non-participating candidates). As discussed below, this procedure differs from how expenditures and receipts are calculated for purposes determining whether the independent expenditure provision has been triggered.

The excess expenditure provision imposes additional reporting requirements on nonparticipating candidates. Conn. Gen. Stat. § 9-712. Non-participating candidates in races with participating opponents must report to the SEEC once they have made expenditures or received contributions that equal 90% of the participating candidate's expenditure limit. *Id.* Once one non-participating candidate reaches that 90% threshold, the CEP requires *all* non-participating candidates in that race to submit supplemental campaign finance statements on a biweekly or weekly basis, depending on when the election is scheduled to take place. *Id.* § 9-712(a)(3). In addition, the high-spending non-participating candidate must report to the SEEC once he or she receives contributions and makes expenditures in amounts exceeding 100%, 125%, 150%, and 175% of the participating candidate's expenditure limit. *Id.* § 9-712(a)(4). Failure to comply with these filing requirements could result in fines of up to

$1,000 for the first failure to timely file the required campaign finance statement and up to $5,000 for each subsequent failure. *Id.* § 9-713(c).

b. Independent Expenditure Trigger Provision

The CEP's independent trigger provision provides matching funds to participating candidates when there are independent expenditures made "with the intent to promote the defeat" of that participating candidate. Conn. Gen. Stat. § 9-714. The SEEC has broadly defined such expenditures as those either:

1. Conveying a public communication containing a phrase including, but not limited to, "vote against," "defeat," "reject," or a campaign slogan or words that in context and with limited reference to external events, such as the proximity to the primary or election, can have no reasonable meaning other than to advocate the defeat of one or more clearly identified candidates; or

2. Making a public communication which names or depicts one or more clearly identified candidates, which, when taken as a whole and with limited reference to external events, contains a portion that can have no reasonable meaning other than to urge the defeat of

> the candidate(s), as evidenced by factors such as the presentation of the candidate(s) in a unfavorable light, the targeting, placement, or timing of the communication, or the inclusion of statements by or about the candidate.

Pl. Ex. 36, Conn. Agencies Reg. § 9-714-1. Consequently, there is a significant potential for any uncoordinated communication that is critical of a participating candidate to be construed as an independent expenditure for purposes of triggering matching funds for the participating candidate under the independent expenditure trigger.

The amount of additional money released to the participating candidate is equal to the amount of the independent expenditure on a dollar-for-dollar basis. *Id.* § 9-714(a). Participating candidates are eligible to receive matching funds worth up to 100% of the original grant amount under the independent expenditure trigger provision. *Id.* § 9-714(c). In races with only CEP-participating candidates, the release of matching funds equal to the amount of the independent expenditure is automatic. *Id.* § 9-714(a)-(b). In races where the participating candidate faces a non-participating candidate, matching funds for the participating candidate are released when the amount of the independent expenditure, combined with the amount of all the non-participating candidates' expenditures, exceeds the amount of the participating

candidate's CEP grant amount. *Id.* § 9-714(c)(2). Therefore, in races with two or more non-participating candidates, the amount of both non-participating candidates' expenditures plus the amount of the independent expenditure are aggregated for purposes of determining whether matching funds should be issued. For example, in a state house race where one non-participating major party candidate spends $24,000 and a non-participating minor party candidate spends $1,000, if a non-candidate makes $5,000 independent expenditure advocating the defeat of the participating candidate, the participating candidate would receive $5,000 in matching funds pursuant to the independent expenditure provision because the two non-participating candidates' expenditures totaled $25,000, the amount of the participating candidate's grant.

Persons making independent expenditures advocating either the success or the defeat of a participating candidate in excess of $1,000 are required to report such expenditures to the SEEC or face civil penalties. *Id.* § 9-612(e).[72]

Taking the trigger provisions together, if the participating candidate faces a high-spending

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[72] If such independent expenditures are made more than 20 days before election day, the report must be made within 48 hours of the expenditure. Conn. Gen. Stat. § 9-612(e)(2). If the independent expenditure is made within 20 days of an election, the report must be made within 24 hours of the expenditure, *id.*, presumably to facilitate the disbursement of matching funds, if necessary.

non-participating candidate and a vocal, uncoordinated opposition campaign from an independent political group, that participating candidate can potentially receive public financing worth up to three times the amount of the original full public grant – the initial grant plus one additional full grant based on the excess expenditure provision and another additional full grant based on the independent expenditure provision. Accordingly, for example, the expenditure limit for a participating state house candidate could potentially increase from $30,000 to $80,000, including $75,000 in public funding. On the state senate side, the expenditure limit for a participating candidate could increase from $100,000 to $270,000, which would include $245,000 in public funding.

2. *Standing*

The state contends that I should not reach the merits of the plaintiffs' First Amendment claims in counts two and three because the plaintiffs lack standing to assert those claims.[73]

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[73] The state does not challenge the plaintiffs' standing to challenge the trigger provisions as part of their claims in count one, namely, that the matching fund provisions contribute to the discriminatory burden on minor party candidates' right of political opportunity in violation of the First and Fourteenth Amendments. Indeed, I have already concluded, in *Green Party I*, that the plaintiffs have standing to challenge the trigger provisions in the context of their claims asserted in count one. 537 F. Supp. 2d at 367 n.9 ("The triggers are nevertheless applicable to plaintiffs' other First and Fourteenth Amendment claims, namely, that the CEP crowds them out of races, especially in one-

According to the state, the plaintiffs have failed to prove how they are likely to be harmed by the trigger provisions because they have failed to demonstrate how minor parties or minor party candidates will ever spend enough during an election to trigger matching funds under either provision. Plaintiffs argue that they have standing to challenge both trigger provisions because those provisions will chill their political speech and because any expenditures that they may make as candidates or as non-candidates engaged in independent advocacy, however modest, could be the basis for triggering additional funding under the independent expenditure provision.

To satisfy Article III standing, "a claimant must present an injury that is concrete, particularized, and actual or imminent; fairly traceable to the defendant's challenged behavior; and likely to be redressed by a favorable ruling." *Davis v. FEC*, __ U.S. __, 128 S. Ct. 2749, 2768 (2008) (citing *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560-61 (1992)). Where the alleged injury is prospective in nature, a party has standing to sue "where the threatened injury is real,

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party-dominant districts, and that the CEP is effectively a subsidy to major party candidates, not a substitute for private campaign contributions. Plaintiffs have standing to raise those First and Fourteenth Amendment claims."). Because I originally dismissed their claims in counts two and three as being without merit, I have not yet addressed the merits of the state's standing argument with respect to counts two and three. *See* Tr. 10/10/08 at 4.

immediate, and direct." *Id.* at 2769. Courts have recognized that a statute's prospective chilling effect on the exercise of First Amendment rights is a sufficiently concrete and particularized injury to confer standing. In *Initiative & Referendum Institute v. Walker*, 450 F.3d 1082, 1089 (10th Cir. 2006), the Tenth Circuit formulated a test for determining standing in suits based on a chilling effect of speech:

> [P]laintiffs in a suit for prospective relief based on a "chilling effect" on speech can satisfy the requirement that their claim of injury be "concrete and particularized" by (1) evidence that in the past they have engaged in the type of speech affected by the challenged government action; (2) affidavits or testimony stating a present desire, though no specific plans, to engage in such speech; and (3) a plausible claim that they presently have no intention to do so because of a credible threat that the statute will be enforced.

Id. The Court reasoned that in such cases a plaintiff need not demonstrate a "present intention" to engage in speech "at a specific time in the future" because "[a] plaintiff who alleges a chilling effect asserts that the very existence of some statute discourages, or even prevents, the exercise of his First Amendment rights." *Id.* Plaintiffs establish standing by satisfying the above criteria; "it is not necessary to show that

they have specific plans or intentions to engage in the type of speech affected by the challenged government action." *Id.*

In *North Carolina Right to Life Committee Fund for Independent Political Expenditures v. Leake*, 524 F.3d 427, 434-35 (4th Cir. 2008), the Fourth Circuit considered whether the plaintiffs had standing to challenge a public campaign financing program's trigger provisions, despite having insufficient funds to make an independent expenditure that would have triggered any matching funds. The Court first held that "a plaintiff may establish the injury necessary to challenge campaign finance regulations by alleging an intention to engage in a course of conduct arguably affected with a constitutional interest" and that a plaintiff may make "conditional statements of intent" that he or she "would engage in a course of conduct but for the defendants' allegedly illegal action" thereby establishing the requisite the injury in fact. *Id.* at 435 (internal quotations omitted). Accordingly, the Court concluded that the plaintiffs had standing because they had sufficiently established "that they would have made contributions and expenditures but for the challenged provisions."

Similarly, the First Circuit has held that a plaintiff had sufficient standing to challenge a public financing scheme where she had demonstrated that the scheme had affected her political strategy during the campaign. *Vote Choice, Inc. v. DeStefano*, 4 F.3d 26, 36-37 (1st

Cir. 1993). Although in that case the plaintiff had already conducted her campaign, the key point for the Court was that the public financing scheme's "impact on the strategy and conduct of an office-seeker's political campaign constitutes an injury of a kind sufficient to confer standing." *Id.* at 37. *See also American Civil Liberties Union of Nevada v. Heller*, 378 F.3d 979, 984 (9th Cir. 2004) (holding that plaintiffs' allegation that they would self-censor their speech in the future on account of the statute was sufficient to confer standing in a challenge to the statute on First Amendment grounds).

I conclude that plaintiffs seeking prospective relief based on the chilling effect of the trigger provisions have standing to challenge those provisions where they can adequately demonstrate that they have engaged in the type of speech affected by the provisions in the past; that they have a present desire, but no specific intention to engage in such affected speech, which can include altering the conduct and strategy of their 2010 campaigns and beyond, due to the trigger provisions; and a plausible claim they will alter their behavior or not engage in the protected speech as they otherwise would based on the threat that such conduct will trigger additional campaign funding for their opponents.

The plaintiffs in this case have demonstrated standing to challenge the constitutionality of the independent expenditure trigger provision. Because the independent expenditure provision contemplates aggregating

the campaign expenditures of all non-participating candidates with any independent expenditure by a non-candidate individual or advocacy group, there is no minimum amount of money that a non-participating minor party candidate must expend in order to trigger matching funds for participating candidates. For example, if a minor party candidate for state house spends $1,000 – a fundraising threshold which many minor candidates have surpassed and are likely to do so again in the next election in 2010 – and another non-participating major party candidate in that race spends $24,000, whenever there is a subsequent independent expenditure advocating the defeat of the participating candidate, matching funds will be released. In that scenario, the minor party candidate's expenditures directly caused the release of matching funds and he or she will be directly impacted by the operation of the independent expenditure trigger provision, even without personally spending over the participating candidate's grant amount. In addition, any person or group making an independent expenditure over $1,000 is subject to separate, mandatory disclosure requirements, regardless whether that expenditure would result in matching funds being triggered or not.

Furthermore, in races with two participating candidates, *any* level of independent expenditure will trigger matching funds for the participating candidates. According to DeRosa, the CEP's difficult qualifying criteria will encourage the Green Party to engage in more

direct forms of advocacy, such as independent expenditures expressly advocating the defeat of a participating candidate rather than solely focusing on running candidates on the Green Party platform. Pl. Ex. A-9, DeRosa Supp. Decl. at ¶ 21. In 2006, for example, the Green Party actively supported Democrat Diane Farrell in her race against Republican incumbent United States Representative Chris Shays, based on the Green Party and Farrell's shared political objectives on issues including the environment and the war in Iraq. *Id.* at ¶¶ 22-23. In a race for state office with participating candidates, any similar mailing, advertisement, or other form of public advocacy promoting the defeat of a participating candidate would automatically trigger CEP matching funds equal to the cost of such advocacy. DeRosa believes that the existence of the independent expenditure provision will chill the Green Party from engaging in such efforts because the party will have to consider whether it would be worth engaging in the political speech that would trigger increased public funding for the candidate they oppose. *Id.* at ¶¶ 20-21, 25-26.

Because there is no question that minor parties will continue to run in races with CEP-participating opponents, and because their campaign expenditures and independent advocacy efforts will be aggregated with other candidate expenditures and independent expenditures to trigger matching funds under the independent expenditure provision, I conclude that the trigger provision will chill the plaintiffs' desire to enter those races or to expend any

amount of money on independent advocacy. Therefore, the plaintiffs stand to suffer a real, immediate, and direct injury as a result of the independent expenditure provision; thus they have standing to challenge the provision's constitutionality.

Although the excess expenditure provision presents a closer question on the issue of standing, I nevertheless conclude that the plaintiffs have demonstrated sufficient likelihood of injury to establish the necessary standing to challenge the constitutionality of that trigger provision. According to the plaintiffs, the immediate injury being caused by the excess expenditure provision is the chilling effect that it is having, and will continue to have, on their efforts to negotiate around the CEP. Because minor party candidates face difficult obstacles to qualifying for public financing, the logical route that the minor parties will take – and indeed, the only route available to the Libertarian Party and its candidates, who have eschewed participation in the CEP entirely – is to undertake self-financed and/or privately financed races. *Id.* at ¶¶ 28- 29. Based on the high amount of public funding that participating candidates will receive through CEP grants, minor parties must logically attempt to raise contributions that exceed that public funding in order to be competitive. The minor parties' search for viable candidates capable of running self-financed campaigns, or who have a solid base of high-donor contributors, will be made more difficult by the existence of the excess expenditure fund because it will

immediately wipe away any incentive created by superior fundraising, for those potential candidates to run on a minor party platform. *Id.* at ¶¶ 37-38. As Governor Weicker's experience demonstrates, his superior fundraising capabilities provided a significant key to his success as a minor party candidate for Governor in 1990. Pl. Ex. A-2, Weicker Decl. ¶ 20. Because outspending major party candidates has proven successful for minor party candidates in the past, and because the plaintiffs' efforts to try to recruit new types of candidates are being chilled, and will continue to be chilled, by the existence of the excess expenditure provision, the plaintiffs have asserted the requisite concrete injury attributable to the excess expenditure provision. Like the proverbial sword of Damocles, which need not fall for its impact to be felt, the threat of the CEP's trigger provisions alone is sufficient to prospectively chill First Amendment-protected expression.

Furthermore, the excess expenditure provision imposes mandatory disclosure requirements for all non-participating candidates in a race where one of those candidates spends or receives contributions equal to 90% of the participating candidate's expenditure limit. Once that threshold is reached, the CEP requires all non-participating candidates to file regular supplemental campaign finance statements. Therefore, even if the minor party candidate does not individually spend or receive enough contributions to trigger the excess expenditure provision, if he or she is in a race with another

non-participating candidate who *does* near the excess expenditure trigger, the minor party candidate will then become subject to the burden of additional campaign finance disclosure requirements. Failure to make those timely disclosures could result in heavy civil penalties even for candidates who do not make enough expenditures or collect enough contributions to trigger the disclosure requirements and matching funds in the first place.

Consequently, based on those threatened injuries that are real, immediate, and direct, the plaintiffs have sufficiently demonstrated the necessary standing to challenge the constitutionality of the excess expenditure trigger provision.

3. *Discussion*

Relying on the Supreme Court's decision in *Davis v. FEC*, the plaintiffs contend that the CEP trigger provisions impermissibly burden the exercise of their First Amendment rights. According to the plaintiffs, because the provisions act as indirect expenditure limits on nonparticipating candidates and independent advocacy groups, those provisions must be struck down independently from the CEP's constitutional infirmities raised in count one. Because the matching funds are triggered when non-participating candidates or independent advocacy groups and/or non-candidate individuals engage in political speech in excess of the participating candidate's expenditure limits, the

plaintiffs contend that the trigger provisions deter, or "chill," such political speech by discouraging the non-participating candidates and non-candidates from making those types of expenditures in the first place. The plaintiffs maintain that the choice forced upon non-participating candidates and non-candidate individuals and groups – i.e., abide by the participating candidate's expenditure limit or else confer a benefit upon that opposing candidate in the form of additional funding – is an unconstitutional burden on those nonparticipating candidates and non-candidates' exercise of First Amendment rights.

The state counters that *Davis* is not controlling on the issue whether a public financing scheme's matching funds violate the First Amendment rights of non-participating candidates and non-candidate individuals and groups engaged in independent political speech. The state contends that the decisions upholding matching fund trigger provisions in public financing programs survive *Davis*, and that, accordingly, the trigger provisions are a constitutional feature of the CEP. The state further contends that, even if the matching funds do burden the speech rights of non-participating candidates and non-candidates, the provisions are narrowly tailored to further a compelling state interest, i.e., to increase participation in the CEP and to protect the public fisc by keeping down the amount of initial CEP grants.

In *Green Party I*, I dismissed the plaintiffs' claims in counts two and three because I agreed with the state that the prevailing caselaw at the time supported the conclusion that, because a non-participating candidate or independent advocacy group was not literally prevented from speaking nor subject to any expenditure limit, the release of matching funds to the participating opponent did not burden the First Amendment rights of the non-participating candidate or group. 537 F. Supp. 2d at 391 (citing *Daggett v. Comm'n on Governmental Ethics & Election Practices*, 205 F.3d 445, 465 (1st Cir. 2000) (holding public funding system's matching fund provision based on independent expenditures did not burden speakers' First Amendment rights); *Jackson v. Leake*, 476 F. Supp. 2d 515, 529 (E.D.N.C. 2006) (rejecting argument that trigger provisions in public campaign financing scheme impairs speaker's First Amendment speech rights); *Ass'n of Am. Physicians & Surgeons v. Brewer*, 363 F. Supp. 2d 1197, 1199-1203 (D. Ariz. 2005) (rejecting plaintiffs' First Amendment challenge to public financing scheme's matching fund provisions and adopting reasoning of *Daggett*); *Wilkinson v. Jones*, 876 F. Supp. 916, 927-28 (W.D. Ky. 1995) (rejecting constitutional challenge to trigger provision that increased participating candidate's expenditure limit based on the expenditures of privately-financed candidates)). Indeed, even after my decision in *Green Party I*, but before the Supreme Court's decision in *Davis*, the Fourth Circuit, relying on *Daggett*, rejected the argument that the state's

public funding scheme's matching fund provisions burdened the First Amendment rights of non-participating candidates and non-candidate advocacy groups because those persons remained free from any expenditure limits and were not prevented from engaging unlimited political speech. *Leake*, 524 F.3d at 437-38 (affirming district court's holding in *Jackson v. Leake*, 476 F. Supp. 2d at 529), *cert denied by Duke v. Leake*, 129 S. Ct. 490 (2008).

The only decision supporting plaintiffs' claim at the time was the Eighth Circuit's decision in *Day v. Holahan*, 34 F.3d 1356, 1359-60 (8th Cir. 1994), which held that matching funds for independent expenditures advocating the defeat of the participating candidate impaired the speech of the individual or group making the independent expenditure. According to the *Day* Court, "[t]he knowledge that a candidate who one does not want to be elected will have her spending limits increased and will receive a public subsidy . . . as a direct result of that independent expenditure, chills the free exercise of that protected speech." *Id.* at 1360. The Eighth Circuit was concerned that the provision would result in "self-censorship" by persons who would have otherwise engaged in protected political speech, but for the matching provision that would increase the disfavored candidate's campaign funding. *Id.* The *Day* Court further rejected the state's argument that its matching fund provision served a legitimate, let alone compelling, state interest. *Id.* at 1361-62.

In *Davis*, the Supreme Court considered a First Amendment challenge to the so-called "Millionaires' Amendment," section 319(a) and (b) of the Bipartisan Campaign Finance Reform Act of 2002. *Id.* at 2766. Briefly, the Millionaires' Amendment altered contribution limits for congressional candidates facing a self-financed opponent whose personal campaign expenditures exceeded $350,000. *Id.* Candidates facing such a high-spending, self-financed opponent would then be permitted to collect individual contributions worth up to $6,900, three times the normal contribution limit of $2,300. *Id.* The self-financed opponent, however, would remain limited to collecting individual contributions of $2,300 or less. *Id.* The *Davis* plaintiff, a high-spending, high-net worth candidate for the United States House of Representatives, challenged the increased contribution limit provision on the ground that it burdened his exercise of First Amendment rights to make unlimited personal campaign expenditures because, by allowing his opponent to raise more money than otherwise permitted, it counteracted and diminished the effectiveness of his own political speech. *Id.* at 2770.

Acknowledging that the Millionaires' Amendment did not impose an outright cap on self-financed candidates' personal campaign expenditures, the Supreme Court nevertheless concluded that the provision was constitutionally objectionable because it forced those candidates "to choose between the First Amendment right to engage in unfettered political speech and

subjection to discriminatory fundraising limitations." *Id.* at 2771-72. According to the Court, the self-financed candidate who chooses to spend over $350,000, thus increasing his opponent's contribution limit, "must shoulder a special and potentially significant burden" because that choice produced fundraising advantages for his opponent. *Id.* at 2772 (citing *Day*, 34 F.3d at 1359-60). In practice, the Court noted, the Millionaires' Amendment required candidates to either limit one's own expenditures or accept the burden of triggering increased contribution limits for his or her opponent. *Id.* The Court concluded that the choice "impose[d] a substantial burden on the exercise of the First Amendment right to use personal funds for campaign speech," and determined that the government had failed to advance any compelling interest that would justify that burden on the exercise of political speech rights. The Court was troubled by the government's position "that a candidate's speech may be restricted in order to 'level electoral opportunities'" because that would allow the government to "arrogate the voters' authority to evaluate the strengths of candidates competing for office." *Id.* at 2773. "Leveling electoral opportunities means making and implementing judgments about which strengths should be permitted to contribute to the outcome of an election," a power conferred by the Constitution on voters, not the government. *Id.* Finally, the Court noted that "it is a dangerous business for Congress to use the election laws to influence the voters' choices." *Id.*

There is no question that the Supreme Court's decision in *Davis* has breathed new life into the legal reasoning of *Day*. Although *Davis* did not directly address the constitutionality of a public financing scheme's matching fund provisions, its focus on whether it is constitutional for the government to benefit a candidate's opponent on the basis of that candidate's exercise of his or her First Amendment right to make unfettered personal campaign expenditures is pertinent to the issues presented in this case. The state's argument that the reasoning of the *Daggett* line of cases survives *Davis* rests on too narrow a reading of *Davis*. Although it is true that the campaign finance provision at issue in *Davis* was a discriminatory, asymmetrical contribution limit for candidates in the same race, and not a matching funds provision in a public financing scheme, the holding was founded on the same principle advanced by the plaintiffs in this case: that it is a substantial burden on the exercise of First Amendment rights to force a candidate to choose between engaging in his or her right to make personal campaign expenditures, which then confers a benefit on an opponent, or adhering to a self-imposed limit on campaign expenditures.[74]

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[74] The state urges me to decide that *Davis* is not controlling on the issue of matching

funds in public financing schemes because the Supreme Court declined to grant certiorari in *Leake*, after it had decided *Davis*. The Court decides to grant or deny certiorari for a host of reasons; I decline to speculate that it did so

Although the benefit to CEP-participating candidates is not the same – rather than having contribution limits increased as in *Davis*, the CEP releases additional public funding grants – the effect is the same. The non-participating opponent making excess expenditures or the non-candidate making independent expenditures must choose whether to forgo his or her additional spending on speech or see his or her opponent receive an additional infusion of public funding. Like the Millionaires' Amendment, there are no expenditure limits on the non-participating candidate or non-candidate's ability to expend funds. But, also like the Millionaires' Amendment, "it imposes an unprecedented penalty on any candidate who robustly exercises that First Amendment right [to self-finance his or campaign]" because it requires the nonparticipating candidate and/or the non-candidate to choose between engaging in "unfettered political speech" or self-limiting one's expenditures.[75] *Id.* at 2771.

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specifically because it believed *Davis* was not controlling on the issue presented by *Leake*.

[75] In the case of the independent expenditure provision, the amount of non-participating candidate expenditures and non-candidate expenditures that will trigger additional funding is actually less than the participating candidate's expenditure limit. Conn. Gen. Stat. § 9-714(c)(2). The independent expenditure provision is triggered, and additional funds are released, once the expenditures are in excess of the participating candidate's *grant* amount, not full expenditure limit. *Id.*

Arguably the benefit conferred by the CEP trigger provisions is more constitutionally objectionable than increasing an opponent's individual contribution limits. In the latter scenario, the opponent must still go out and raise the additional contributions; there is no guarantee that increasing contribution limits will actually result in increased contributions. The CEP, by contrast, ensures that there will be additional money to counteract the excess expenditures by the non-participating candidate, or the independent expenditures by the non-candidate or independent political advocacy group, because the participating candidate automatically receives additional funding. By making those expenditures, the non-participating candidate or advocacy group is guaranteed to see the participating candidate's funding increase. Therefore, following the reasoning set forth in *Davis*, the trigger provisions unquestionably burden the exercise of First Amendment rights.

Finally, the state has failed to advance a compelling state interest that would justify the substantial burden placed on First Amendment rights by the trigger provisions. The state claims the matching funds are necessary to promote participation in the CEP, while expressly disclaiming that the matching funds are meant to "level the playing" field. Practically speaking, however, there is no real difference between those two concepts – candidates are encouraged to participate in the CEP with the guarantee that their funding will be increased in the event they face a high-spending, non-participating candidate.

In other words, the CEP's matching fund provisions ensure candidates that the playing field will be leveled so that the baseline grants and expenditure limits imposed by the CEP will never hamstring their ability to mount a successful campaign against a high-spending opponent or active non-candidate individual or group advocating the candidate's defeat. The *Davis* Court expressly declined to hold such interest as sufficiently compelling to withstand strict scrutiny.

As for the state's claim that the matching funds are necessary to prevent against wasting the public fisc with high initial grant amounts, that argument falls flat in light of my conclusion that the initial grants, as they are currently structured, give most major party candidates more money than they could historically have been able to raise or spend. Therefore, the state's argument that the matching funds are necessary to keep the size of the initial grant "down" is without merit.

I conclude that the trigger provisions place a substantial burden on the exercise of First Amendment rights and the state has failed to advance a compelling state interest that would otherwise justify that burden. Accordingly, the operation and enforcement those provisions must be enjoined.

III. Conclusion

I find in favor of the Green Party of Connecticut, S. Michael DeRosa, and the Libertarian Party with respect to the claims in count one, two, and three.[76] A declaratory judgment shall issue that the CEP unconstitutionally burdens the plaintiffs' rights to political opportunity and that the CEP's trigger provisions burden their First Amendment speech rights.

The state defendants – Jeffrey Garfield and Richard Blumenthal – are permanently enjoined from operating and enforcing the CEP. Therefore:

IT IS ORDERED that the defendants, Jeffrey Garfield, in his official capacity as Executive Director and General Counsel of the State Elections Enforcement Commission, and Richard Blumenthal, in his official capacity as Attorney General of the State of Connecticut, and their agents, officers, directors, trustees, employees, and anyone acting in concert with them who receives actual notice of this order, are hereby permanently enjoined from operating and enforcing the CEP. This injunction issues without a bond.

All pending motions are denied as moot. The clerk shall enter judgment and close this case.

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[76] Judgment entered against the remaining plaintiffs' claims in count four on February 11, 2009 (doc. #333).

It is so ordered.

Dated at Bridgeport, Connecticut, this 27th day of August 2009.

/s/ Stefan R. Underhill

Stefan R. Underhill
United States District Judge

APPENDIX A 2004 Senate Candidate Expenditures

District & Percentage of the Vote	Expenditures	Contested District[1] Expenditures	Competitive District[2] Expenditures	Minor Party District Expenditures
District 1				
Republican	XXX			XXX
Democrat (85.7%)	$3,226.75			$3,226.75
Green (11.4%)	$150.08			$150.08
Working Families (2.9%)	EXEMPT[3]			EXEMPT
District 2				
Republican	XXX			XXX
Democrat (94.3%)	$44,742.28			$44,742.28
Working Families (5.7%)	EXEMPT			EXEMPT
District 3				
Republican (30.9)%	$1,603.00	$1,603.00		$1,603.00
Democrat (66.7%)	$33,019.48	$33,019.48		$33,019.48
Working Families (2.36%)	EXEMPT	EXEMPT		EXEMPT
District 4				
Republican (32.2)%	$3,022.89	$3,022.89		$3,022.89
Democrat (66.3%)	$36,850.60	$36,850.60		$36,850.60
Working Families (1.5%)	EXEMPT	EXEMPT		EXEMPT
District 5				
Republican (42%)	$139,252.32	$139,252.32	$139,252.32	
Democrat (58%)	$200,585.49	$200,585.49	$200,585.49	
District 6				
Republican	XXX			XXX
Democrat (95.4%)	$58,883.00			$58,883.00
Working Families (4.6%)	EXEMPT			EXEMPT

[1] "Contested District" means a district with candidates from both major parties.

[2] "Competitive District" means a district where the major party candidates' vote totals were within 20% of one another.

[3] "Exempt" means a candidate who raised or spent less than $1,000.

APPENDIX A 2004 Senate Candidate Expenditures

District & Percentage of the Vote	Expenditures	Contested District[1] Expenditures	Competitive District[2] Expenditures	Minor Party District Expenditures
District 7				
Republican (50.8%)	$28,628.41	$28,628.41	$28,628.41	
Democrat (49.2%)	$41,456.41	$41,456.41	$41,456.41	
District 8				
Republican (60.8%)	$39,784.25	$39,784.25		$39,784.25
Democrat (31.5%)	$514.43	$514.43		$514.43
Green (5.1%)	EXEMPT	EXEMPT		EXEMPT
Working Families (2.6%)	EXEMPT	EXEMPT		EXEMPT
District 9				
Republican (39%)	$96,519.15	$96,519.15		
Democrat (61%)	$180,121.81	$180,121.81		
District 10				
Republican	XXX			
Democrat (100%)	$43,925.15			
District 11				
Republican	XXX			
Democrat (100%)	$53,316.25			
District 12				
Republican (48.4%)	$195,077.00	$195,077.00	$195,077.00	
Democrat (51.6%)	$176,561.46	$176,561.46	$176,561.46	
District 13				
Republican (27.5%)	EXEMPT	EXEMPT		
Democrat (72.5%)	$47,415.70	$47,415.70		

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[3] "Exempt" means a candidate who raised or spent less than $1,000.

APPENDIX A 2004 Senate Candidate Expenditures

District & Percentage of the Vote	Expenditures	Contested District[1] Expenditures	Competitive District[2] Expenditures	Minor Party District Expenditures
District 14				
Republican (48.1%)	$132,521.57	$132,521.57	$132,521.57	
Democrat (51.9%)	$167,777.17	$167,777.17	$167,777.17	
District 15				
Republican	XXX			XXX
Democrat (90.3%)	$32,065.40			$32,065.40
Independent (9.7%)	EXEMPT			EXEMPT
District 16				
Republican (37.1%)	$5,962.99	$5,962.99		$5,962.99
Democrat (60%)	$88,430.00	$88,430.00		$88,430.00
Working Families (0.7%)	EXEMPT	EXEMPT		EXEMPT
Independent (2.2%)	EXEMPT	EXEMPT		EXEMPT
District 17				
Republican	XXX			XXX
Democrat (94.4%)	$56,487.56			$56,487.56
Working Families (5.6%)	EXEMPT			EXEMPT
District 18				
Republican (54.5)%	$86,528.07	$86,528.07	$86,528.07	
Democrat (45.5%)	$81,842.13	$81,842.13	$81,842.13	
District 19				
Republican (37.6%)	$77,602.02	$77,602.02		
Democrat (62.4%)	$65,014.51	$65,014.51		

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[3] "Exempt" means a candidate who raised or spent less than $1,000.

APPENDIX A 2004 Senate Candidate Expenditures

District & Percentage of the Vote	Expenditures	Contested District[1] Expenditures	Competitive District[2] Expenditures	Minor Party District Expenditures
District 20				
Republican (38.7%)	$68,442.92	$68,442.92		
Democrat (61.3%)	$106,349.58	$106,349.58		
District 21				
Republican	$10,841.95			$10,841.95
Democrat (90.6%)	XXX			XXX
Working Families (9.4%)	EXEMPT			EXEMPT
District 22				
Republican (45.6%)	$120,087.56	$120,087.56	$120,087.56	$120,087.56
Democrat (53.6%)	$120,443.35	$120,443.35	$120,443.35	$120,443.35
Working Families (0.8%)	EXEMPT	EXEMPT	EXEMPT	EXEMPT
District 23				
Republican (23.6)%	$3,485.00	$3,485.00		
Democrat (76.4%)	$38,662.65	$38,662.65		
District 24				
Republican (64.4%)	$101,644.52	$101,644.52		$101,644.52
Democrat (32.3%)	$9,178.00	$9,178.00		$9,178.00
Libertarian (0.9%)	EXEMPT	EXEMPT		EXEMPT
Working Families (0.6%)	EXEMPT	EXEMPT		EXEMPT
Independent (0.8%)	EXEMPT	EXEMPT		EXEMPT

[1] "Contested District" means a district with candidates from both major parties.

[2] "Competitive District" means a district where the major party candidates' vote totals were within 20% of one another.

[3] "Exempt" means a candidate who raised or spent less than $1,000.

APPENDIX A 2004 Senate Candidate Expenditures

District & Percentage of the Vote	Expenditures	Contested District[1] Expenditures	Competitive District[2] Expenditures	Minor Party District Expenditures
District 25				
Republican (41.1%)	UNAVAILABLE	UNAVAILABLE	UNAVAILABLE	
Democrat (58.8%)	$129,722.85	$129,722.85	$129,722.85	
District 26				
Republican (59.8%)	$33,325.64	$33,325.64		$33,325.64
Democrat (39.4%)	$213,044.44	$213,044.44		$213,044.44
Working Families (0.8%)	EXEMPT	EXEMPT		EXEMPT
District 27				
Republican (38.4%)	$11,973.89	$11,973.89		$11,973.89
Democrat (60.6%)	UNAVAILABLE	UNAVAILABLE		UNAVAILABLE
Working Families (0.8%)	EXEMPT	EXEMPT		EXEMPT
District 28				
Republican (65.2%)	$45,166.94	$45,166.94		
Democrat (34.8%)	$1,092.28	$1,092.28		
District 29				
Republican	XXX			
Democrat (100%)	$45,539.75			
District 30				
Republican (93.3%)	$27,457.61			$27,457.61
Democrat	XXX			XXX
Working Families (6.7%)	EXEMPT			EXEMPT

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[3] "Exempt" means a candidate who raised or spent less than $1,000.

APPENDIX A 2004 Senate Candidate Expenditures

District & Percentage of the Vote	Expenditures	Contested District[1] Expenditures	Competitive District[2] Expenditures	Minor Party District Expenditures
District 31				
Republican (47.4%)	$66,189.56	$66,189.56	$66,189.56	
Democrat (52.6%)	$23,526.67	$23,526.67	$23,526.67	
District 32				
Republican (100%)	$32,629.43			
Democrat	XXX			
District 33				
Republican (27%)	$11,313.88	$11,313.88		$11,313.88
Democrat (69.7%)	$65,898.41	$65,898.41		$65,898.41
Green (2.4%)	EXEMPT	EXEMPT		EXEMPT
Working Families (0.9%)	EXEMPT	EXEMPT		EXEMPT
District 34				
Republican (100%)	$81,499.81			
Democrat	XXX			
District 35				
Republican (67.2%)	$71,492.25	$71,492.25		$71,492.25
Democrat (31.1%)	$20,150.00	$20,150.00		$20,150.00
Working Families (1.7%)	EXEMPT	EXEMPT		EXEMPT
District 36				
Republican (91.6%)	$65,130.00			$65,130.00
Democrat	XXX			XXX
Green (8.4%)	EXEMPT			EXEMPT

[1] "Contested District" means a district with candidates from both major parties.

[2] "Competitive District" means a district where the major party candidates' vote totals were within 20% of one another.

[3] "Exempt" means a candidate who raised or spent less than $1,000.

APPENDIX A 2004 Senate Candidate Expenditures

District & Percentage of the Vote	Expenditures	Contested District[1] Expenditures	Competitive District[2] Expenditures	Minor Party District Expenditures
AVERAGE EXPENDITURES:	$65,669.76	$74,122.82	$114,013.33	$45,954.44
MEDIAN EXPENDITURES:	$47,415.70	$65,898.41	$120,443.35	$33,172.56

[1] "Contested District" means a district with candidates from both major parties.

[2] "Competitive District" means a district where the major party candidates' vote totals were within 20% of one another.

[3] "Exempt" means a candidate who raised or spent less than $1,000.

APPENDIX B 2004 House Candidate Expenditures

District & Percentage of the Vote	Expenditures	Contested District[1] Expenditures	Competitive District[2] Expenditures	Minor Party District Expenditures
District 1				
Republican	XXX			
Democrat (100%)	$1,859.02			
District 2				
Republican (50.4%)	$35,117.49	$35,117.49	$35,117.49	
Democrat (49.6%)	$32,212.07	$32,212.07	$32,212.07	
District 3				
Republican	XXX			XXX
Democrat (94.7%)	$14,858.82			$14,858.82
Working Families (5.3%)	EXEMPT			EXEMPT
District 4				
Republican (14.2%)	UNAVAILABLE	UNAVAILABLE		
Democrat (85.8%)	$18,361.39	$18,361.39		
District 5				
Republican	XXX			XXX
Democrat (97.4%)	$30,745.00			$30,745.00
Libertarian (2.6%)	EXEMPT[3]			EXEMPT
District 6				
Republican (17.5%)	EXEMPT	EXEMPT		EXEMPT
Democrat (80.3%)	$71,288.00	$71,288.00		$71,288.00
Working Families (2.2%)	EXEMPT	EXEMPT		EXEMPT

[1] "Contested District" means a district with candidates from both major parties.

[2] "Competitive District" means a district where the major party candidates' vote totals were within 20% of one another.

[3] "Exempt" means a candidate who raised or spent less than $1,000.

APPENDIX B 2004 House Candidate Expenditures

District & Percentage of the Vote	Expenditures	Contested District[1] Expenditures	Competitive District[2] Expenditures	Minor Party District Expenditures
District 7				
Republican	XXX			
Democrat (100%)	$11,885.00			
District 8				
Republican	XXX			XXX
Democrat (89.8%)	$8,435.59			$8,435.59
Working Families (10.2%)	EXEMPT			EXEMPT
District 9				
Republican	XXX			XXX
Democrat (94.5%)	$11,530.92			$11,530.92
Working Families (5.5%)	EXEMPT			EXEMPT
District 10				
Republican (23.7%)	EXEMPT	EXEMPT		EXEMPT
Democrat (74.5%)	$19,591.34	$19,591.34		$19,591.34
Working Families (1.8%)	EXEMPT	EXEMPT		EXEMPT
District 11				
Republican (28.5%)	$1,425.00	$1,425.00		
Democrat (71.5%)	$12,634.81	$12,634.81		
District 12				
Republican (35.2%)	EXEMPT	EXEMPT		
Democrat (64.8%)	$30,945.49	$30,945.49		

[1] "Contested District" means a district with candidates from both major parties.

[2] "Competitive District" means a district where the major party candidates' vote totals were within 20% of one another.

[3] "Exempt" means a candidate who raised or spent less than $1,000.

APPENDIX B 2004 House Candidate Expenditures

District & Percentage of the Vote	Expenditures	Contested District[1] Expenditures	Competitive District[2] Expenditures	Minor Party District Expenditures
District 13				
Republican (27.9%)	UNAVAILABLE	UNAVAILABLE		
Democrat (72.1%)	$8,867.38	$8,867.38		
District 14				
Republican (56.2%)	$40,130.57	$40,130.57	$40,130.57	$40,130.57
Democrat (40.3%)	$24,993.56	$24,993.56	$24,993.56	$24,993.56
Petitioning (3.5%)	$7,001.67	$7,001.67	$7,001.67	$7,001.67
District 15				
Republican (24.6%)	UNAVAILABLE	UNAVAILABLE		
Democrat (75.4%)	$5,062.87	$5,062.87		
District 16				
Republican (65%)	$38,744.18	$38,744.18		$38,744.18
Democrat (32.8%)	$8,055.00	$8,055.00		$8,055.00
Working Families (1.5%)	EXEMPT	EXEMPT		EXEMPT
Petitioning (0.7%)	EXEMPT	EXEMPT		EXEMPT
District 17				
Republican (60.4%)	$31,123.94	$31,123.94		
Democrat (39.6%)	$18,646.99	$18,646.99		
District 18				
Republican	XXX			
Democrat (100%)	$11,378.14			

[1] "Contested District" means a district with candidates from both major parties.

[2] "Competitive District" means a district where the major party candidates' vote totals were within 20% of one another.

[3] "Exempt" means a candidate who raised or spent less than $1,000.

APPENDIX B 2004 House Candidate Expenditures

District & Percentage of the Vote	Expenditures	Contested District[1] Expenditures	Competitive District[2] Expenditures	Minor Party District Expenditures
District 19				
Republican (56.8%)	$24,115.00	$24,115.00	$24,115.00	
Democrat (43.2%)	$7,931.33	$7,931.33	$7,931.33	
District 20				
Republican (28.4%)	$793.27	$793.27		
Democrat (71.6%)	$29,288.30	$29,288.30		
District 21				
Republican (37.2%)	$29,748.41	$29,748.41		
Democrat (62.8%)	$30,612.32	$30,612.32		
District 22				
Republican (22.7%)	EXEMPT	EXEMPT		
Democrat (77.3%)	$22,982.00	$22,982.00		
District 23				
Republican (62.2%)	$17,435.21	$17,435.21		$17,435.21
Democrat (35.5%)	$7,295.00	$7,295.00		$7,295.00
Working Families (2.3%)	EXEMPT	EXEMPT		EXEMPT
District 24				
Republican (23.5%)	$4,107.29	$4,107.29		$4,107.29
Democrat (74.6%)	$14,639.34	$14,639.34		$14,639.34
Concerned Citizens (1.9%)	EXEMPT	EXEMPT		EXEMPT

[1] "Contested District" means a district with candidates from both major parties.

[2] "Competitive District" means a district where the major party candidates' vote totals were within 20% of one another.

[3] "Exempt" means a candidate who raised or spent less than $1,000.

APPENDIX B 2004 House Candidate Expenditures

District & Percentage of the Vote	Expenditures	Contested District[1] Expenditures	Competitive District[2] Expenditures	Minor Party District Expenditures
District 25				
Republican	XXX			
Democrat (100%)	$792.45			
District 26				
Republican	XXX			
Democrat (100%)	$10,421.74			
District 27				
Republican	XXX			XXX
Democrat (94.9%)	$21,060.00			$21,060.00
Working Families (5.1%)	EXEMPT			EXEMPT
District 28				
Republican	XXX			
Democrat (100%)	$20,420.00			
District 29				
Republican (35.3%)	$18,517.00	$18,517.00		
Democrat (64.7%)	$39,821.00	$39,821.00		
District 30				
Republican (45.3%)	$21,552.00	$21,552.00	$21,552.00	
Democrat (54.7%)	$24,168.71	$24,168.71	$24,168.71	
District 31				
Republican (58.8%)	$14,152.09	$14,152.09	$14,152.09	
Democrat (41.2%)	$26,519.69	$26,519.69	$26,519.69	
District 32				
Republican	XXX			
Democrat (100%)	$1,888.67			

[1] "Contested District" means a district with candidates from both major parties.

[2] "Competitive District" means a district where the major party candidates' vote totals were within 20% of one another.

[3] "Exempt" means a candidate who raised or spent less than $1,000.

APPENDIX B 2004 House Candidate Expenditures

District & Percentage of the Vote	Expenditures	Contested District[1] Expenditures	Competitive District[2] Expenditures	Minor Party District Expenditures
District 33				
Republican (28.4%)	$1,750.00	$1,750.00		$1,750.00
Democrat (66.8%)	$21,874.10	$21,874.10		$21,874.10
Libertarian (1.8%)	EXEMPT	EXEMPT		EXEMPT
Working Families (3%)	EXEMPT	EXEMPT		EXEMPT
District 34				
Republican(45%)	$33,429.58	$33,429.58	$33,429.58	
Democrat (55%)	$18,153.13	$18,153.13	$18,153.13	
District 35				
Republican	XXX			
Democrat (100%)	$9,829.51			
District 36				
Republican	XXX			
Democrat (100%)	$9,019.43			
District 37				
Republican (45.7%)	$19,971.14	$19,971.14	$19,971.14	
Democrat (54.3%)	$20,114.42	$20,114.42	$20,114.42	
District 38				
Republican (45.2%)	$24,319.88	$24,319.88	$24,319.88	$24,319.88
Democrat (51.8%)	$21,519.00	$21,519.00	$21,519.00	$21,519.00
Petitioning (2.97%)	EXEMPT	EXEMPT	EXEMPT	EXEMPT

[1] "Contested District" means a district with candidates from both major parties.

[2] "Competitive District" means a district where the major party candidates' vote totals were within 20% of one another.

[3] "Exempt" means a candidate who raised or spent less than $1,000.

APPENDIX B 2004 House Candidate Expenditures

District & Percentage of the Vote	Expenditures	Contested District[1] Expenditures	Competitive District[2] Expenditures	Minor Party District Expenditures
District 39				
Republican (29.1%)	$5,615.00	$5,615.00		
Democrat (70.9%)	$22,454.00	$22,454.00		
District 40				
Republican (37.2%)	$5,496.00	$5,496.00		
Democrat (62.8%)	$14,877.07	$14,877.07		
District 41				
Republican (100%)	$18,129.00			
Democrat	XXX			
District 42				
Republican (41.3%)	$11,937.83	$11,937.83	$11,937.83	
Democrat (58.7%)	$26,596.85	$26,596.85	$26,596.85	
District 43				
Republican (100%)	$9,746.45			
Democrat	XXX			
District 44				
Republican (55.2%)	$13,190.00	$13,190.00	$13,190.00	
Democrat (44.8%)	$5,975.16	$5,975.16	$5,975.16	
District 45				
Republican (24.2%)	EXEMPT	EXEMPT		EXEMPT
Democrat (73.7%)	$19,170.00	$19,170.00		$19,170.00
Working Families (2.1%)	EXEMPT	EXEMPT		EXEMPT

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[2] "Competitive District" means a district where the major party candidates' vote totals were within 20% of one another.

[3] "Exempt" means a candidate who raised or spent less than $1,000.

APPENDIX B 2004 House Candidate Expenditures

District & Percentage of the Vote	Expenditures	Contested District[1] Expenditures	Competitive District[2] Expenditures	Minor Party District Expenditures
District 46				
Republican	XXX			XXX
Democrat (93.2%)	$13,705.07			$13,705.07
Petitioning (6.8%)	$339.92			$339.92
District 47				
Republican	XXX			
Democrat (100%)	$5,350.00			
District 48				
Republican	XXX			
Democrat (100%)	$13,640.00			
District 49				
Republican	XXX			XXX
Democrat (81.3%)	$38,383.13			$38,383.13
Working Families (7.7%)	EXEMPT			EXEMPT
Petitioning (11%)	EXEMPT			EXEMPT
District 50				
Republican (50.2%)	$19,265.16	$19,265.16	$19,265.16	
Democrat (49.8%)	$28,482.53	$28,482.53	$28,482.53	
District 51				
Republican	XXX			
Democrat (100%)	EXEMPT			
District 52				
Republican (67%)	$30,609.86	$30,609.86		$30,609.86
Democrat (31.9%)	$23,285.95	$23,285.95		$23,285.95
Christian Center (1.1%)	EXEMPT	EXEMPT		EXEMPT

[1] "Contested District" means a district with candidates from both major parties.

[2] "Competitive District" means a district where the major party candidates' vote totals were within 20% of one another.

[3] "Exempt" means a candidate who raised or spent less than $1,000.

APPENDIX B 2004 House Candidate Expenditures

District & Percentage of the Vote	Expenditures	Contested District[1] Expenditures	Competitive District[2] Expenditures	Minor Party District Expenditures
District 53				
Republican	XXX			
Democrat (100%)	$6,234.95			
District 54				
Republican	XXX			XXX
Democrat (94.5%)	$7,260.00			$7,260.00
Working Families (5.5%)	EXEMPT			EXEMPT
District 55				
Republican (69.2%)	$21,349.23	$21,349.23		$21,349.23
Democrat (29.1%)	EXEMPT	EXEMPT		EXEMPT
Working Families (1.7%)	EXEMPT	EXEMPT		EXEMPT
District 56				
Republican (32%)	$7,863.88	$7,863.88		
Democrat (68%)	$21,065.00	$21,065.00		
District 57				
Republican	XXX			XXX
Democrat (90.9%)	$7,319.00			$7,319.00
Working Families (9.1%)	EXEMPT			EXEMPT
District 58				
Republican (33.5%)	EXEMPT	EXEMPT		
Democrat (66.5%)	$11,931.71	$11,931.71		

[1] "Contested District" means a district with candidates from both major parties.

[2] "Competitive District" means a district where the major party candidates' vote totals were within 20% of one another.

[3] "Exempt" means a candidate who raised or spent less than $1,000.

APPENDIX B 2004 House Candidate Expenditures

District & Percentage of the Vote	Expenditures	Contested District[1] Expenditures	Competitive District[2] Expenditures	Minor Party District Expenditures
District 59				
Republican				
(33.7%)	$1,295.00	$1,295.00		$1,295.00
Democrat (64.8%)	$5,309.38	$5,309.38		$5,309.38
Working Families				
(1.5%)	EXEMPT	EXEMPT		EXEMPT
District 60				
Republican				
(34.3%)	$3,863.59	$3,863.59		
Democrat (65.7%)	$19,049.93	$19,049.93		
District 61				
Republican				
(91.4%)	$4,336.84			$4,336.84
Democrat	XXX			XXX
Working Families				
(8.6%)	EXEMPT			EXEMPT
District 62				
Republican				
(91.4%)	$7,195.94			$7,195.94
Democrat	XXX			XXX
Working Families				
(8.6%)	EXEMPT			EXEMPT
District 63				
Republican				
(42.9%)	$22,060.00	$22,060.00	$22,060.00	
Democrat (57.1%)	$20,617.39	$20,617.39	$20,617.39	
District 64				
Republican				
(40.6%)	$29,294.39	$29,294.39	$29,294.39	
Democrat (59.4%)	$43,183.47	$43,183.47	$43,183.47	

[1] "Contested District" means a district with candidates from both major parties.

[2] "Competitive District" means a district where the major party candidates' vote totals were within 20% of one another.

[3] "Exempt" means a candidate who raised or spent less than $1,000.

APPENDIX B 2004 House Candidate Expenditures

District & Percentage of the Vote	Expenditures	Contested District[1] Expenditures	Competitive District[2] Expenditures	Minor Party District Expenditures
District 65				
Republican (52.5%)	$21,462.98	$21,462.98	$21,462.98	
Democrat (47.5%)	$16,224.17	$16,224.17	$16,224.17	
District 66				
Republican (60%)	$11,176.74	$11,176.74		
Democrat (40%)	$10,335.80	$10,335.80		
District 67				
Republican (67.8%)	$12,403.47	$12,403.47		
Democrat (32.2%)	$42.39	$42.39		
District 68				
Republican (72.1%)	$22,625.00	$22,625.00		
Democrat (27.9%)	$4,583.84	$4,583.84		
District 69				
Republican (100%)	$1,239.29			
Democrat	XXX			
District 70				
Republican (91.7%)	$39,826.01			$39,826.01
Democrat	XXX			XXX
Independent (3.5%)	EXEMPT			EXEMPT
Working Families (4.8%)	EXEMPT			EXEMPT

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[3] "Exempt" means a candidate who raised or spent less than $1,000.

APPENDIX B 2004 House Candidate Expenditures

District & Percentage of the Vote	Expenditures	Contested District[1] Expenditures	Competitive District[2] Expenditures	Minor Party District Expenditures
District 71				
Republican (81.7%)	$14,537.94			$14,537.94
Democrat	XXX			XXX
Independent (18.3%)	EXEMPT			EXEMPT
District 72				
Republican	XXX			XXX
Democrat (84.2%)	$8,220.00			$8,220.00
Working Families (3.8%)	EXEMPT			EXEMPT
Independent (8.5%)	EXEMPT			EXEMPT
Petitioning (3.5%)	EXEMPT			EXEMPT
District 73				
Republican	XXX			XXX
Democrat (82.1%)	$37,340.93			$37,340.93
Working Families (3.9%)	EXEMPT			EXEMPT
Independent (14%)	EXEMPT			EXEMPT
District 74				
Republican (60%)	$64,850.87	$64,850.87		$64,850.87
Democrat (37.5%)	$13,857.32	$13,857.32		$13,857.32
Independent (2.5%)	EXEMPT	EXEMPT		EXEMPT

[1] "Contested District" means a district with candidates from both major parties.

[2] "Competitive District" means a district where the major party candidates' vote totals were within 20% of one another.

[3] "Exempt" means a candidate who raised or spent less than $1,000.

APPENDIX B 2004 House Candidate Expenditures

District & Percentage of the Vote	Expenditures	Contested District[1] Expenditures	Competitive District[2] Expenditures	Minor Party District Expenditures
District 75				
Republican (25.9%)	$9,548.13	$9,548.13		$9,548.13
Democrat (64.4%)	$24,048.43	$24,048.43		$24,048.43
Concerned Citizens (1.7%)	EXEMPT	EXEMPT		EXEMPT
Working Families (2.7%)	EXEMPT	EXEMPT		EXEMPT
Independent (5.3%)	EXEMPT	EXEMPT		EXEMPT
District 76				
Republican (68.6%)	$10,995.00	$10,995.00		$10,995.00
Democrat (30.2%)	$1,425.00	$1,425.00		$1,425.00
Working Families (1.2%)	EXEMPT	EXEMPT		EXEMPT
District 77				
Republican (35.8%)	$7,651.00	$7,651.00		
Democrat (64.2%)	$7,315.00	$7,315.00		
District 78				
Republican (91.9%)	$5,839.60			$5,839.60
Democrat	XXX			XXX
Libertarian (4.6%)	EXEMPT			EXEMPT
Working Families (3.5%)	EXEMPT			EXEMPT

[1] "Contested District" means a district with candidates from both major parties.

[2] "Competitive District" means a district where the major party candidates' vote totals were within 20% of one another.

[3] "Exempt" means a candidate who raised or spent less than $1,000.

APPENDIX B 2004 House Candidate Expenditures

District & Percentage of the Vote	Expenditures	Contested District[1] Expenditures	Competitive District[2] Expenditures	Minor Party District Expenditures
District 79				
Republican	XXX			
Democrat (100%)	$13,121.33			
District 80				
Republican (36.7%)	EXEMPT	EXEMPT		EXEMPT
Democrat (61.9%)	$28,743.00	$28,743.00		$28,743.00
Concerned Citizens (1.4%)	EXEMPT	EXEMPT		EXEMPT
District 81				
Republican	XXX			
Democrat (100%)	$13,739.98			
District 82				
Republican	XXX			XXX
Democrat (90.2%)	$6,684.63			$6,684.63
Libertarian (6.8%)	EXEMPT			EXEMPT
Working Families (3%)	EXEMPT			EXEMPT
District 83				
Republican	XXX			
Democrat (100%)	$18,620.82			
District 84				
Republican	XXX			
Democrat (100%)	$12,404.25			

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[2] "Competitive District" means a district where the major party candidates' vote totals were within 20% of one another.

[3] "Exempt" means a candidate who raised or spent less than $1,000.

APPENDIX B 2004 House Candidate Expenditures

District & Percentage of the Vote	Expenditures	Contested District[1] Expenditures	Competitive District[2] Expenditures	Minor Party District Expenditures
District 85				
Republican	XXX			XXX
Democrat (95.01%)	$1,880.57			$1,880.57
Working Families (4.99%)	EXEMPT			EXEMPT
District 86				
Republican (57%)	$38,410.00	$38,410.00	$38,410.00	
Democrat (43%)	$9,223.89	$9,223.89	$9,223.89	
District 87				
Republican (35.9%)	$28,600.00	$28,600.00		
Democrat (64.1%)	$30,268.51	$30,268.51		
District 88				
Republican	XXX			XXX
Democrat (95.7%)	$6,605.00			$6,605.00
Working Families (4.3%)	EXEMPT			EXEMPT
District 89				
Republican (44.1%)	$10,918.43	$10,918.43	$10,918.43	
Democrat (55.9%)	$17,374.29	$17,374.29	$17,374.29	
District 90				
Republican	XXX			
Democrat (100%)	$26,981.10			
District 91				
Republican (19.3%)	$250.00	$250.00		
Democrat (80.7%)	$8,080.83	$8,080.83		

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[2] "Competitive District" means a district where the major party candidates' vote totals were within 20% of one another.

[3] "Exempt" means a candidate who raised or spent less than $1,000.

APPENDIX B 2004 House Candidate Expenditures

District & Percentage of the Vote	Expenditures	Contested District[1] Expenditures	Competitive District[2] Expenditures	Minor Party District Expenditures
District 92				
Republican	XXX			XXX
Democrat (96.3%)	$12,704.00			$12,704.00
Working Families (3.7%)	EXEMPT			EXEMPT
District 93				
Republican	XXX			XXX
Democrat (72.7%)	$17,368.15			$17,368.15
Green (27.3%)	$10,102.51			$10,102.51
District 94				
Republican	XXX			
Democrat (100%)	$4,949.45			
District 95				
Republican	XXX			
Democrat (100%)	$11,510.05			
District 96				
Republican (20%)	$933.00	$933.00		
Democrat (80%)	$18,016.07	$18,016.07		
District 97				
Republican	XXX			
Democrat (100%)	$2,825.00			
District 98				
Republican (33%)	$15,924.31	$15,924.31		
Democrat (77%)	$19,366.51	$19,366.51		
District 99				
Republican	XXX			XXX
Democrat (80.9%)	$11,411.03			$11,411.03
Petitioning (19.1%)	$8,320.00			$8,320.00

[1] "Contested District" means a district with candidates from both major parties.

[2] "Competitive District" means a district where the major party candidates' vote totals were within 20% of one another.

[3] "Exempt" means a candidate who raised or spent less than $1,000.

APPENDIX B 2004 House Candidate Expenditures

District & Percentage of the Vote	Expenditures	Contested District[1] Expenditures	Competitive District[2] Expenditures	Minor Party District Expenditures
District 100				
Republican (51.5%)	$4,292.57	$4,292.57	$4,292.57	
Democrat (48.4%)	EXEMPT	EXEMPT	EXEMPT	
District 101				
Republican (47%)	$11,225.00	$11,225.00	$11,225.00	
Democrat (53%)	$23,538.82	$23,538.82	$23,538.82	
District 102				
Republican	XXX			
Democrat (100%)	$1,628.44			
District 103				
Republican (55.7%)	$26,979.55	$26,979.55	$26,979.55	
Democrat (44.3%)	$23,050.00	$23,050.00	$23,050.00	
District 104				
Republican (47.9%)	$24,598.49	$24,598.49	$24,598.49	
Democrat (53.1%)	$28,904.40	$28,904.40	$28,904.40	
District 105				
Republican (62%)	$20,199.14	$20,199.14		
Democrat (38%)	$12,851.16	$12,851.16		
District 106				
Republican (94.9%)	$8,300.00			$8,300.00
Democrat	XXX			XXX
Working Families (5.1%)	EXEMPT			EXEMPT

[1] "Contested District" means a district with candidates from both major parties.

[2] "Competitive District" means a district where the major party candidates' vote totals were within 20% of one another.

[3] "Exempt" means a candidate who raised or spent less than $1,000.

APPENDIX B 2004 House Candidate Expenditures

District & Percentage of the Vote	Expenditures	Contested District[1] Expenditures	Competitive District[2] Expenditures	Minor Party District Expenditures
District 107				
Republican (93.1%)	$15,087.85			$15,087.85
Democrat	XXX			XXX
Independent (6.9%)	EXEMPT			EXEMPT
District 108				
Republican (100%)	$11,565.00			
Democrat	XXX			
District 109				
Republican (43.9%)	$20,215.00	$20,215.00	$20,215.00	
Democrat (56.1%)	$21,972.00	$21,972.00	$21,972.00	
District 110				
Republican (40.4%)	$10,051.72	$10,051.72	$10,051.72	
Democrat (59.6%)	$19,320.96	$19,320.96	$19,320.96	
District 111				
Republican (66.3%)	$66,140.00	$66,140.00		
Democrat (33.7%)	$9,928.00	$9,928.00		
District 112				
Republican (65.2%)	$28,365.00	$28,365.00		
Democrat (34.8%)	$3,237.32	$3,237.32		
District 113				
Republican (56.7%)	$10,961.07	$10,961.07	$10,961.07	
Democrat (43.3%)	$1,685.00	$1,685.00	$1,685.00	

[1] "Contested District" means a district with candidates from both major parties.

[2] "Competitive District" means a district where the major party candidates' vote totals were within 20% of one another.

[3] "Exempt" means a candidate who raised or spent less than $1,000.

APPENDIX B 2004 House Candidate Expenditures

District & Percentage of the Vote	Expenditures	Contested District[1] Expenditures	Competitive District[2] Expenditures	Minor Party District Expenditures
District 114				
Republican (100%)	$11,749.36			
Democrat	XXX			
District 115				
Republican	XXX			XXX
Democrat (95.9%)	$14,965.08			$14,965.08
Working Families (4.1%)	EXEMPT			EXEMPT
District 116				
Republican	XXX			XXX
Democrat (89.4%)	UNAVAILABLE			UNAVAILABLE
Working Families (4%)	EXEMPT			EXEMPT
Reform (6.6%)	EXEMPT			EXEMPT
District 117				
Republican (47.6%)	UNAVAILABLE	UNAVAILABLE	UNAVAILABLE	
Democrat (52.4%)	$24,837.85	$24,837.85	$24,837.85	
District 118				
Republican	XXX			
Democrat (100%)	$22,029.54			
District 119				
Republican (42.6%)	UNAVAILABLE	UNAVAILABLE	UNAVAILABLE	
Democrat (57.4%)	$21,359.49	$21,359.49	$21,359.49	
District 120				
Republican (52.9%)	$29,610.87	$29,610.87	$29,610.87	
Democrat (47.1%)	$13,719.63	$13,719.63	$13,719.63	

[1] "Contested District" means a district with candidates from both major parties.

[2] "Competitive District" means a district where the major party candidates' vote totals were within 20% of one another.

[3] "Exempt" means a candidate who raised or spent less than $1,000.

APPENDIX B 2004 House Candidate Expenditures

District & Percentage of the Vote	Expenditures	Contested District[1] Expenditures	Competitive District[2] Expenditures	Minor Party District Expenditures
District 121				
Republican (24.9%)	EXEMPT	EXEMPT		
Democrat (75.1%)	$19,373.15	$19,373.15		
District 122				
Republican (100%)	$5,410.00			
Democrat	XXX			
District 123				
Republican (62.8%)	$28,230.00	$28,230.00		$28,230.00
Democrat (35.5%)	EXEMPT	EXEMPT		EXEMPT
Working Families (1.7%)	$5,005.27	$5,005.27		$5,005.27
District 124				
Republican (16.7%)	UNAVAILABLE	UNAVAILABLE		
Democrat (83.3%)	$8,600.00	$8,600.00		
District 125				
Republican (100%)	$8,130.00			
Democrat	XXX			
District 126				
Republican (15.6%)	EXEMPT	EXEMPT		EXEMPT
Democrat (83.2%)	$6,360.88	$6,360.88		$6,360.88
Working Families (1.2%)	EXEMPT	EXEMPT		EXEMPT

[1] "Contested District" means a district with candidates from both major parties.

[2] "Competitive District" means a district where the major party candidates' vote totals were within 20% of one another.

[3] "Exempt" means a candidate who raised or spent less than $1,000.

APPENDIX B 2004 House Candidate Expenditures

District & Percentage of the Vote	Expenditures	Contested District[1] Expenditures	Competitive District[2] Expenditures	Minor Party District Expenditures
District 127				
Republican (35.2%)	$6,161.41	$6,161.41		$6,161.41
Democrat (63%)	$19,677.79	$19,677.79		$19,677.79
Working Families (1.8%)	EXEMPT	EXEMPT		EXEMPT
District 128				
Republican (17.7%)	EXEMPT	EXEMPT		EXEMPT
Democrat (80.1%)	$5,190.89	$5,190.89		$5,190.89
Working Families (2.2%)	EXEMPT	EXEMPT		EXEMPT
District 129				
Republican (23.9%)	EXEMPT	EXEMPT		EXEMPT
Democrat (74.8%)	$14,269.50	$14,269.50		$14,269.50
Working Families (1.3%)	EXEMPT	EXEMPT		EXEMPT
District 130				
Republican (17.9%)	EXEMPT	EXEMPT		
Democrat (82.1%)	$7,111.57	$7,111.57		
District 131				
Republican (68.5%)	$32,019.00	$32,019.00		$32,019.00
Democrat (30.2%)	$1,527.90	$1,527.90		$1,527.90
Working Families (1.3%)	EXEMPT	EXEMPT		EXEMPT

[1] "Contested District" means a district with candidates from both major parties.

[2] "Competitive District" means a district where the major party candidates' vote totals were within 20% of one another.

[3] "Exempt" means a candidate who raised or spent less than $1,000.

APPENDIX B 2004 House Candidate Expenditures

District & Percentage of the Vote	Expenditures	Contested District[1] Expenditures	Competitive District[2] Expenditures	Minor Party District Expenditures
District 132				
Republican (47%)	$18,760.00	$18,760.00	$18,760.00	$18,760.00
Democrat (51.9%)	UNAVAILABLE	UNAVAILABLE	UNAVAILABLE	UNAVAILABLE
Working Families (1.1%)	EXEMPT	EXEMPT	EXEMPT	EXEMPT
District 133				
Republican (100%)	$7,865.00			
Democrat	XXX			
District 134				
Republican (53.9%)	$29,050.00	$29,050.00	$29,050.00	
Democrat (46.1%)	$13,863.26	$13,863.26	$13,863.26	
District 135				
Republican (82.1%)	$5,137.67			$5,137.67
Democrat	XXX			XXX
Green (17.9%)	UNAVAILABLE			UNAVAILABLE
District 136				
Republican (48.6%)	$40,247.00	$40,247.00	$40,247.00	
Democrat (51.4%)	$21,890.00	$21,890.00	$21,890.00	
District 137				
Republican (35.2%)	$13,742.28	$13,742.28		$13,742.28
Democrat (63.6%)	$17,850.00	$17,850.00		$17,850.00
Working Families (1.2%)	EXEMPT	EXEMPT		EXEMPT

[1] "Contested District" means a district with candidates from both major parties.

[2] "Competitive District" means a district where the major party candidates' vote totals were within 20% of one another.

[3] "Exempt" means a candidate who raised or spent less than $1,000.

APPENDIX B 2004 House Candidate Expenditures

District & Percentage of the Vote	Expenditures	Contested District[1] Expenditures	Competitive District[2] Expenditures	Minor Party District Expenditures
District 138				
Republican (60.1%)	$24,690.00	$24,690.00		$24,690.00
Democrat (38.2%)	$3,534.37	$3,534.37		$3,534.37
Independent (1.7%)	EXEMPT	EXEMPT		EXEMPT
District 139				
Republican (36.1%)	$11,871.00	$11,871.00		
Democrat (63.9%)	$22,260.00	$22,260.00		
District 140				
Republican (25.2%)	$5,691.00	$5,691.00		
Democrat (74.8%)	EXEMPT	EXEMPT		
District 141				
Republican (58.2%)	$19,233.20	$19,233.20		
Democrat (41.8%)	$49,841.97	$49,841.97		
District 142				
Republican (91.8%)	$24,363.25			$24,363.25
Democrat	XXX			XXX
Working Families (8.2%)	EXEMPT			EXEMPT
District 143				
Republican (61.5%)	$33,935.00	$33,935.00		
Democrat (38.5%)	$6,741.62	$6,741.62		

[1] "Contested District" means a district with candidates from both major parties.

[2] "Competitive District" means a district where the major party candidates' vote totals were within 20% of one another.

[3] "Exempt" means a candidate who raised or spent less than $1,000.

APPENDIX B 2004 House Candidate Expenditures

District & Percentage of the Vote	Expenditures	Contested District[1] Expenditures	Competitive District[2] Expenditures	Minor Party District Expenditures
District 144				
Republican (43.1%)	$26,767.50	$26,767.50	$26,767.50	$26,767.50
Democrat (55.4%)	$58,163.64	$58,163.64	$58,163.64	$58,163.64
Petitioning (1.5%)	$6,340.29	$6,340.29	$6,340.29	$6,340.29
District 145				
Republican	XXX			
Democrat (100%)	$3,462.56			
District 146				
Republican (29.2)%	$878.54	$878.54		$878.54
Democrat (68.9%)	$23,640.00	$23,640.00		$23,640.00
Working Families (1.9%)	EXEMPT	EXEMPT		EXEMPT
District 147				
Republican (59.9%)	$16,139.76	$16,139.76	$16,139.76	
Democrat (40.1%)	$3,022.28	$3,022.28	$3,022.28	
District 148				
Republican (38.3%)	$6,383.26	$6,383.26		
Democrat (61.7%)	$26,625.00	$26,625.00		
District 149				
Republican (61.3%)	$33,195.43	$33,195.43		
Democrat (38.7%)	UNAVAILABLE	UNAVAILABLE		

[1] "Contested District" means a district with candidates from both major parties.

[2] "Competitive District" means a district where the major party candidates' vote totals were within 20% of one another.

[3] "Exempt" means a candidate who raised or spent less than $1,000.

APPENDIX B 2004 House Candidate Expenditures

District & Percentage of the Vote	Expenditures	Contested District[1] Expenditures	Competitive District[2] Expenditures	Minor Party District Expenditures
District 150 *Republican* (100%) *Democrat*	UNAVAILABLE XXX			
District 151 *Republican* (100%) *Democrat*	UNAVAILABLE XXX			
AVERAGE EXPENDITURES:	**$16,807.89**	**$18,741.59**	**$21,336.40**	**$16,933.83**
MEDIAN EXPENDITURES:	**$14,210.80**	**$18,760.00**	**$21,490.99**	**$13,857.32**

[1] "Contested District" means a district with candidates from both major parties.

[2] "Competitive District" means a district where the major party candidates' vote totals were within 20% of one another.

[3] "Exempt" means a candidate who raised or spent less than $1,000.

APPENDIX C 2006 Senate Candidate Receipts

District & Percentage of the Vote	Receipts	Contested District[1] Receipts	Competitive District[2] Receipts	Districts with Minor Party Candidates
District 1				
Republican	XXX			XXX
Democrat (94.1%)	$36,586.00			$36,586.00
Green (5.9%)	EXEMPT[3]			EXEMPT
District 2				
Republican (15%)	$0.00	$0.00		
Democrat (85%)	$29,035.00	$29,035.00		
District 3				
Republican (28.2%)	$5,218.00	$5,218.00		
Democrat (71.8%)	$53,905.00	$53,905.00		
District 4				
Republican (38.9%)	$23,438.00	$23,438.00		
Democrat (61.1%)	$49,767.00	$49,767.00		
District 5				
Republican (29.3%)	$4,845.00	$4,845.00		
Democrat (70.7%)	$119,801.00	$119,801.00		
District 6				
Republican	XXX			
Democrat (100%)	$39,783.00			
District 7				
Republican (52.7%)	$66,990.00	$66,990.00	$66,990.00	
Democrat (47.3%)	$111,765.00	$111,765.00	$111,765.00	

[1] "Contested District" means a district with candidates from both major parties.

[2] "Competitive District" means a district where the major party candidates' vote totals were within 20% of one another.

[3] "Exempt" means a candidate who raised or spent less than $1,000.

APPENDIX C 2006 Senate Candidate Receipts

District & Percentage of the Vote	Receipts	Contested District[1] Receipts	Competitive District[2] Receipts	Districts with Minor Party Candidates
District 8				
Republican (50.5%)	$55,844.00	$55,844.00	$55,844.00	
Democrat (49.5%)	$37,673.00	$37,673.00	$37,673.00	
District 9				
Republican (40.3%)	$152,289.00	$152,289.00	$152,289.00	$152,289.00
Democrat (58.3%)	$174,168.00	$174,168.00	$174,168.00	$174,168.00
Working Families (1.4%)	$600.00	$600.00	$600.00	$600.00
District 10				
Republican (12.3%)	$500.00	$500.00		
Democrat (87.7%)	$67,184.00	$67,184.00		
District 11				
Republican	XXX			
Democrat (100%)	$43,030.00			
District 12				
Republican (35.7%)	$54,017.00	$54,017.00		
Democrat (64.3%)	$120,332.00	$120,332.00		
District 13				
Republican (23.3%)	EXEMPT	EXEMPT		
Democrat (76.7%)	$62,795.00	$62,795.00		
District 14				
Republican (35.9%)	$115,028.00	$115,028.00		
Democrat (64.1%)	$94,195.00	$94,195.00		

[1] "Contested District" means a district with candidates from both major parties.

[2] "Competitive District" means a district where the major party candidates' vote totals were within 20% of one another.

[3] "Exempt" means a candidate who raised or spent less than $1,000.

APPENDIX C 2006 Senate Candidate Receipts

District & Percentage of the Vote	Receipts	Contested District[1] Receipts	Competitive District[2] Receipts	Districts with Minor Party Candidates
District 15				
Republican	XXX			XXX
Democrat (88.2%)	$51,301.00			$51,301.00
Independent (11.8%)	EXEMPT			EXEMPT
District 16				
Republican (54.8%)	$229,294.00	$229,294.00	$229,294.00	
Democrat (45.2%)	$151,853.00	$151,853.00	$151,853.00	
District 17				
Republican (22.7%)	$7,119.00	$7,119.00		
Democrat (77.3%)	$47,965.00	$47,965.00		
District 18				
Republican (48.6%)	$135,063.00	$135,063.00	$135,063.00	
Democrat (51.4%)	$167,986.00	$167,986.00	$167,986.00	
District 19				
Republican (30.4%)	$25,089.00	$25,089.00		
Democrat (69.6%)	$44,757.00	$44,757.00		
District 20				
Republican (39.4%)	$52;196.00	$52,196.00		
Democrat (60.6%)	$71,937.00	$71,937.00		
District 21				
Republican (52.2%)	$198,629.00	$198,629.00	$198,629.00	
Democrat (47.8%)	$91,571.00	$91,571.00	$91,571.00	

[1] "Contested District" means a district with candidates from both major parties.

[2] "Competitive District" means a district where the major party candidates' vote totals were within 20% of one another.

[3] "Exempt" means a candidate who raised or spent less than $1,000.

APPENDIX C 2006 Senate Candidate Receipts

District & Percentage of the Vote	Receipts	Contested District[1] Receipts	Competitive District[2] Receipts	Districts with Minor Party Candidates
District 22				
Republican (45.6%)	$156,930.00	$156,930.00	$156,930.00	
Democrat (54.4%)	$150,593.00	$150,593.00	$150,593.00	
District 23				
Republican (15.1%)	EXEMPT	EXEMPT		
Democrat (86.9%)	$2,700.00	$2,700.00		
District 24				
Republican (100%)	$59,683.00			
Democrat	XXX			
District 25				
Republican (34.3%)	$82,011.00	$82,011.00		
Democrat (65.7%)	$110,073.00	$110,073.00		
District 26				
Republican (55.6%)	$42,214.00	$42,214.00	$42,214.00	
Democrat (44.4%)	$100,721.00	$100,721.00	$100,721.00	
District 27				
Republican (37.7%)	$97,181.00	$97,181.00		
Democrat (62.3%)	$174,619.00	$174,619.00		
District 28				
Republican (100%)	$27,410.00			
Democrat	XXX			

[1] "Contested District" means a district with candidates from both major parties.

[2] "Competitive District" means a district where the major party candidates' vote totals were within 20% of one another.

[3] "Exempt" means a candidate who raised or spent less than $1,000.

APPENDIX C 2006 Senate Candidate Receipts

District & Percentage of the Vote	Receipts	Contested District[1] Receipts	Competitive District[2] Receipts	Districts with Minor Party Candidates
District 29				
Republican (24.2%)	$1,791.00	$1,791.00		
Democrat (75.8%)	$63,840.00	$63,840.00		
District 30				
Republican (67%)	$35,276.00	$35,276.00		
Democrat (33%)	$2,020.00	$2,020.00		
District 31				
Republican (41.5%)	$65,387.00	$65,387.00	$65,387.00	
Democrat (58.5%)	$85,604.00	$85,604.00	$85,604.00	
District 32				
Republican (89.2%)	$51,976.00			$51,976.00
Democrat	XXX			XXX
Working Families (10.8%)	EXEMPT			EXEMPT
District 33				
Republican (26.4%)	$9,088.00	$9,088.00		$9,088.00
Democrat (71.6%)	$70,863.00	$70,863.00		$70,863.00
Green (2%)	EXEMPT	EXEMPT		EXEMPT
District 34				
Republican (100%)	$100,595.00			
Democrat	XXX			

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[3] "Exempt" means a candidate who raised or spent less than $1,000.

APPENDIX C 2006 Senate Candidate Receipts

District & Percentage of the Vote	Receipts	Contested District[1] Receipts	Competitive District[2] Receipts	Districts with Minor Party Candidates
District 35				
Republican (100%)	$10,860.00			
Democrat	XXX			
District 36				
Republican (58.6%)	$89,915.00	$89,915.00	$89,915.00	$89,915.00
Democrat (40.1%)	$46,488.00	$46,488.00	$46,488.00	$46,488.00
Green (1.2%)	EXEMPT	EXEMPT	EXEMPT	EXEMPT
AVERAGE RECEIPTS:	$71,473.97	$75,663.43	$110,075.10	$68,327.40
MEDIAN RECEIPTS:	$57,763.50	$65,387.00	$100,721.00	$51,638.50

[1] "Contested District" means a district with candidates from both major parties.

[2] "Competitive District" means a district where the major party candidates' vote totals were within 20% of one another.

[3] "Exempt" means a candidate who raised or spent less than $1,000.

APPENDIX D 2006 House Candidate Receipts

District & Percentage of the Vote	Receipts	Contested District[1] Receipts	Competitive District[2] Receipts	Minor Party District Receipts
District 1				
Republican	XXX			
Democrat (100%)	$1,200.00			
District 2				
Republican (46.1%)	$39,448.00	$39,448.00	$39,448.00	
Democrat (53.9%)	$47,682.00	$47,682.00	$47,682.00	
District 3				
Republican	XXX			
Democrat (100%)	$35,705.00			
District 4				
Republican	XXX			
Democrat (100%)	$50,745.00			
District 5				
Republican	XXX			XXX
Democrat (96.2%)	$14,496.00			$14,496.00
Libertarian (3.8%)	EXEMPT[3]			EXEMPT
District 6				
Republican	XXX			
Democrat (100%)	$18,775.00			
District 7				
Republican (6.5%)	EXEMPT	EXEMPT		
Democrat (93.5%)	$8,875.00	$8,875.00		
District 8				
Republican (39.9%)	$20,964.00	$20,964.00		
Democrat (60.1%)	$25,236.00	$25,236.00		

[1] "Contested District" means a district with candidates from both major parties.

[2] "Competitive District" means a district where the major party candidates' vote totals were within 20% of one another.

[3] "Exempt" means a candidate who raised or spent less than $1,000.

APPENDIX D 2006 House Candidate Receipts

District & Percentage of the Vote	Receipts	Contested District[1] Receipts	Competitive District[2] Receipts	Minor Party District Receipts
District 9				
Republican (27.4%)	$2,575.00	$2,575.00		$2,575.00
Democrat (68.7%)	$49,377.00	$49,377.00		$49,377.00
Working Families (3.9%)	EXEMPT	EXEMPT		EXEMPT
District 10				
Republican (24.4%)	$1,100.00	$1,100.00		
Democrat (75.6%)	$16,600.00	$16,600.00		
District 11				
Republican (26.4%)	$0.00	$0.00		
Democrat (73.6%)	$16,530.00	$16,530.00		
District 12				
Republican (23.9%)	$1,987.00	$1,987.00		
Democrat (76.1%)	$33,470.00	$33,470.00		
District 13				
Republican (34.5%)	$10,809.00	$10,809.00		
Democrat (65.5%)	$13,737.00	$13,737.00		
District 14				
Republican (56.8%)	$32,748.00	$32,748.00	$32,748.00	
Democrat (43.2%)	$24,922.00	$24,922.00	$24,922.00	

[1] "Contested District" means a district with candidates from both major parties.

[2] "Competitive District" means a district where the major party candidates' vote totals were within 20% of one another.

[3] "Exempt" means a candidate who raised or spent less than $1,000.

APPENDIX D 2006 House Candidate Receipts

District & Percentage of the Vote	Receipts	Contested District[1] Receipts	Competitive District[2] Receipts	Minor Party District Receipts
District 15				
Republican	XXX			XXX
Democrat (95.5%)	$815.00			$815.00
Working Families (4.5%)	EXEMPT			EXEMPT
District 16				
Republican (49%)	$44,252.00	$44,252.00	$44,252.00	$44,252.00
Democrat (50.6%)	$32,101.00	$32,101.00	$32,101.00	$32,101.00
Petitioning (0.4%)	EXEMPT	EXEMPT	EXEMPT	EXEMPT
District 17				
Republican (100%)	$15,730.00			
Democrat	XXX			
District 18				
Republican (25.5%)	$11,792.00	$11,792.00		
Democrat (74.5%)	$33,493.00	$33,493.00		
District 19				
Republican (42.6%)	$28,649.00	$28,649.00	$28,649.00	
Democrat (57.4%)	$56,358.00	$56,358.00	$56,358.00	
District 20				
Republican	XXX			
Democrat (100%)	$20,195.00			
District 21				
Republican (29.2%)	$9,155.00	$9,155.00		
Democrat (70.8%)	$29,055.00	$29,055.00		

[1] "Contested District" means a district with candidates from both major parties.

[2] "Competitive District" means a district where the major party candidates' vote totals were within 20% of one another.

[3] "Exempt" means a candidate who raised or spent less than $1,000.

APPENDIX D 2006 House Candidate Receipts

District & Percentage of the Vote	Receipts	Contested District[1] Receipts	Competitive District[2] Receipts	Minor Party District Receipts
District 22				
Republican	XXX			XXX
Democrat (95.4%)	$14,192.00			$14,192.00
Petitioning (4.6%)	EXEMPT			EXEMPT
District 23				
Republican (87.1%)	$14,150.00			$14,150.00
Democrat	XXX			XXX
Working Families (12.9%)	$1,125.00			$1,125.00
District 24				
Republican (21.1%)	EXEMPT	EXEMPT		EXEMPT
Democrat (75.1%)	$9,429.00	$9,429.00		$9,429.00
Concerned Citizens (3.8%)	EXEMPT	EXEMPT		EXEMPT
District 25				
Republican (21.9%)	EXEMPT	EXEMPT		
Democrat (78.1%)	$19,375.00	$19,375.00		
District 26				
Republican (20%)	EXEMPT	EXEMPT		
Democrat (80%)	$8,766.00	$8,766.00		
District 27				
Republican	XXX			
Democrat (100%)	$18,465.00			

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APPENDIX D 2006 House Candidate Receipts

District & Percentage of the Vote	Receipts	Contested District[1] Receipts	Competitive District[2] Receipts	Minor Party District Receipts
District 28				
Republican (40.2%)	$23,583.00	$23,583.00	$23,583.00	
Democrat (59.8%)	$20,189.00	$20,189.00	$20,189.00	
District 29				
Republican	XXX			XXX
Democrat (93.6%)	$36,608.00			$38,608.00
Working Families (6.4%)	EXEMPT			EXEMPT
District 30				
Republican (37.7%)	$34,594.00	$34,594.00		
Democrat (62.3%)	$53,086.00	$53,086.00		
District 31				
Republican (49.7%)	$37,828.00	$37,828.00	$37,828.00	
Democrat (50.3%)	$20,577.00	$20,577.00	$20,577.00	
District 32				
Republican (30.9%)	$6,380.00	$6,380.00		
Democrat (69.1%)	$23,758.00	$23,758.00		
District 33				
Republican (31.6%)	$6,416.00	$6,416.00		
Democrat (68.4%)	$29,010.00	$29,010.00		
District 34				
Republican (49.4%)	$27,303.00	$27,303.00	$27,303.00	
Democrat (50.6%)	$31,331.00	$31,331.00	$31,331.00	

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APPENDIX D 2006 House Candidate Receipts

District & Percentage of the Vote	Receipts	Contested District[1] Receipts	Competitive District[2] Receipts	Minor Party District Receipts
District 35				
Republican (30%)	$850.00	$850.00		
Democrat (70%)	$30,374.00	$30,374.00		
District 36				
Republican (34.1%)	$10,511.00	$10,511.00		
Democrat (65.9%)	$20,574.00	$20,574.00		
District 37				
Republican (44.9%)	$45,852.00	$45,852.00	$45,852.00	
Democrat (55.7%)	$33,067.00	$33,067.00	$33,067.00	
District 38				
Republican (31.3%)	$5,667.00	$5,667.00		
Democrat (68.7%)	$21,925.00	$21,925.00		
District 39				
Republican (29.1%)	EXEMPT	EXEMPT		
Democrat (70.91%)	$8,880.00	$8,880.00		
District 40				
Republican	XXX			
Democrat (100%)	$650.00			
District 41				
Republican (49.5%)	$34,160.00	$34,160.00	$34,160.00	
Democrat (52.5%)	$23,672.00	$23,672.00	$23,672.00	

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APPENDIX D 2006 House Candidate Receipts

District & Percentage of the Vote	Receipts	Contested District[1] Receipts	Competitive District[2] Receipts	Minor Party District Receipts
District 42				
Republican	XXX			
Democrat (100%)	$19,423.00			
District 43				
Republican	$14,875.00			
Democrat (100%)	XXX			
District 44				
Republican (64.7%)	$10,245.00	$10,245.00		
Democrat (35.3%)	$4,741.00	$4,741.00		
District 45				
Republican (19.8%)	EXEMPT	EXEMPT		
Democrat (80.2%)	$12,200.00	$12,200.00		
District 46				
Republican	XXX			
Democrat (100%)	$22,040.00			
District 47				
Republican (39.5%)	$22,637.00	$22,637.00		
Democrat (60.5%)	$25,192.00	$25,192.00		
District 48				
Republican	XXX			
Democrat (100%)	$25,640.00			

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APPENDIX D 2006 House Candidate Receipts

District & Percentage of the Vote	Receipts	Contested District[1] Receipts	Competitive District[2] Receipts	Minor Party District Receipts
District 49				
Republican (38.1%)	$3,066.00	$3,066.00		$3,066.00
Democrat (58.7%)	$22,039.00	$22,039.00		$22,039.00
Concerned Citizens (1.4%)	EXEMPT	EXEMPT		EXEMPT
Petitioning (1.8%)	EXEMPT	EXEMPT		EXEMPT
District 50				
Republican (51.3%)	$23,876.00	$23,876.00	$23,876.00	
Democrat (48.7%)	$40,946.00	$40,946.00	$40,946.00	
District 51				
Republican	XXX			
Democrat (100%)	$1,300.00			
District 52				
Republican (93.5%)	$11,250.00			$11,250.00
Democrat	XXX			XXX
Christian Center (6.5%)	EXEMPT			EXEMPT
District 53				
Republican (42.7%)	$35,523.00	$35,523.00	$35,523.00	
Democrat (57.3%)	$32,478.00	$32,478.00	$32,478.00	
District 54				
Republican	XXX			
Democrat (100%)	$8,094.00			

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APPENDIX D 2006 House Candidate Receipts

District & Percentage of the Vote	Receipts	Contested District[1] Receipts	Competitive District[2] Receipts	Minor Party District Receipts
District 55				
Republican (64.7%)	$24,480.00	$24,480.00		
Democrat (35.3%)	$7,827.00	$7,827.00		
District 56				
Republican (23.2%)	$2,792.00	$2,792.00		
Democrat (76.8%)	$22,090.00	$22,090.00		
District 57				
Republican	XXX			XXX
Democrat (92.8%)	$6,811.00			$6,811.00
Petitioning (7.2%)	EXEMPT			EXEMPT
District 58				
Republican (32.7%)	$5,497.00	$5,497.00		
Democrat (67.3%)	$14,955.00	$14,955.00		
District 59				
Republican (31.3%)	$5,074.00	$5,074.00		$5,074.00
Democrat (67.4%)	$22,396.00	$22,396.00		$22,396.00
Working Families (1.3%)	EXEMPT	EXEMPT		EXEMPT
District 60				
Republican	XXX			XXX
Democrat (77.6%)	$47,120.00			$47,120.00
Petitioning (22.4%)	$4,283.00			$4,283.00

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[3] "Exempt" means a candidate who raised or spent less than $1,000.

APPENDIX D 2006 House Candidate Receipts

District & Percentage of the Vote	Receipts	Contested District[1] Receipts	Competitive District[2] Receipts	Minor Party District Receipts
District 61				
Republican (51.4%)	$44,075.00	$44,075.00	$44,075.00	
Democrat (48.6%)	$46,966.00	$46,966.00	$46,966.00	
District 62				
Republican (92.4%)	$9,405.00			$9,405.00
Democrat	XXX			XXX
Working Families (7.6%)	EXEMPT			EXEMPT
District 63				
Republican (28.6%)	$3,598.00	$3,598.00		
Democrat (71.4%)	$21,489.00	$21,489.00		
District 64				
Republican (32.3%)	$10,377.00	$10,377.00		
Democrat (67.7%)	$46,683.00	$46,683.00		
District 65				
Republican (50.5%)	$25,252.00	$25,252.00	$25,252.00	
Democrat (49.5%)	$11,794.00	$11,794.00	$11,794.00	
District 66				
Republican (84.7%)	$5,355.00			$5,355.00
Democrat	XXX			XXX
Concerned Citizens (5.3%)	EXEMPT			EXEMPT
Working Families (10%)	EXEMPT			EXEMPT

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APPENDIX D 2006 House Candidate Receipts

District & Percentage of the Vote	Receipts	Contested District[1] Receipts	Competitive District[2] Receipts	Minor Party District Receipts
District 67				
Republican (100%)	EXEMPT			
Democrat	XXX			
District 68				
Republican (100%)	$21,930.00			
Democrat	XXX			
District 69				
Republican (100%)	$7,825.00			
Democrat	XXX			
District 70				
Republican (74%)	$20,445.00	$20,445.00		$20,445.00
Democrat (25%)	$1,802.00	$1,802.00		$1,802.00
Independent (1%)	EXEMPT	EXEMPT		EXEMPT
District 71				
Republican (100%)	$15,945.00			
Democrat	XXX			
District 72				
Republican (22.7%)	$3,191.00	$3,191.00		$3,191.00
Democrat (63%)	$15,350.00	$15,350.00		$15,350.00
Independent (12.1%)	EXEMPT	EXEMPT		EXEMPT
Petitioning (2.2%)	EXEMPT	EXEMPT		EXEMPT

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APPENDIX D 2006 House Candidate Receipts

District & Percentage of the Vote	Receipts	Contested District[1] Receipts	Competitive District[2] Receipts	Minor Party District Receipts
District 73				
Republican	XXX			XXX
Democrat (85.3%)	$47,025.00			$47,025.00
Working Families / Independent (14.7%)	EXEMPT			EXEMPT
District 74				
Republican (93.9%)	$48,857.00			$48,857.00
Democrat	XXX			XXX
Independent (6.1%)	EXEMPT			EXEMPT
District 75				
Republican (38.5%)	$13,813.00	$13,813.00	$13,813.00	$13,813.00
Democrat (58.1%)	$10,382.00	$10,382.00	$10,382.00	$10,382.00
Concerned Citizens (1.4%)	EXEMPT	EXEMPT	EXEMPT	EXEMPT
Working Families (1.9%)	EXEMPT	EXEMPT	EXEMPT	EXEMPT
District 76				
Republican (89.3%)	$10,790.00			$10,790.00
Democrat	XXX			XXX
Working Families (10.7%)	EXEMPT			EXEMPT
District 77				
Republican (51%)	$26,816.00	$26,816.00	$26,816.00	
Democrat (49%)	$23,094.00	$23,094.00	$23,094.00	

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APPENDIX D 2006 House Candidate Receipts

District & Percentage of the Vote	Receipts	Contested District[1] Receipts	Competitive District[2] Receipts	Minor Party District Receipts
District 78				
Republican (92.8%)	$26,297.00			$26,297.00
Democrat	XXX			XXX
Working Families (7.2%)	EXEMPT			EXEMPT
District 79				
Republican (32.3%)	$12,181.00	$12,181.00		
Democrat (67.7%)	$11,829.00	$11,829.00		
District 80				
Republican (30.8%)	$14,954.00	$14,954.00		$14,954.00
Democrat (66.9%)	$30,308.00	$30,308.00		$30,308.00
Concerned Citizens (2.3%)	EXEMPT	EXEMPT		EXEMPT
District 81				
Republican (29.1%)	$2,287.00	$2,287.00		$2,287.00
Democrat (68.2%)	$11,410.00	$11,410.00		$11,410.00
Concerned Citizens (2.7%)	EXEMPT	EXEMPT		EXEMPT
District 82				
Republican (18.4%)	$60.00	$60.00		$60.00
Democrat (71.8%)	$34,835.00	$34,835.00		$34,835.00
Libertarian (7.4%)	EXEMPT	EXEMPT		EXEMPT
Working Families (2.4%)	EXEMPT	EXEMPT		EXEMPT

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APPENDIX D 2006 House Candidate Receipts

District & Percentage of the Vote	Receipts	Contested District[1] Receipts	Competitive District[2] Receipts	Minor Party District Receipts
District 83				
Republican (29.2%)	$4,439.00	$4,439.00		
Democrat (70.8%)	$10,940.00	$10,940.00		
District 84				
Republican	XXX			
Democrat (100%)	$19,225.00			
District 85				
Republican	XXX			XXX
Democrat (94.1%)	$2,912.00			$2,912.00
Petitioning (5.9%)	EXEMPT			EXEMPT
District 86				
Republican (50.8%)	$28,371.00	$28,371.00		
Democrat (49.2%)	$20,347.00	$20,347.00		
District 87				
Republican (32.6%)	$12,660.00	$12,660.00		
Democrat (67.4%)	$29,168.00	$29,168.00		
District 88				
Republican	XXX			
Democrat (100%)	$4,680.00			
District 89				
Republican (45.1%)	$50,871.00	$50,871.00	$50,871.00	
Democrat (54.9%)	$34,265.00	$34,265.00	$34,265.00	

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APPENDIX D 2006 House Candidate Receipts

District & Percentage of the Vote	Receipts	Contested District[1] Receipts	Competitive District[2] Receipts	Minor Party District Receipts
District 90				
Republican (31.2%)	$2,320.00	$2,320.00		
Democrat (68.8%)	$28,590.00	$28,590.00		
District 91				
Republican	XXX			
Democrat (100%)	$8,465.00			
District 92				
Republican (10%)	$0.00	$0.00		
Democrat (90%)	$35,365.00	$35,365.00		
District 93				
Republican	XXX			
Democrat (100%)	$6,500.00			
District 94				
Republican	XXX			
Democrat (100%)	$13,527.00			
District 95				
Republican	XXX			
Democrat (100%)	$4,515.00			
District 96				
Republican	XXX			
Democrat (100%)	$18,453.00			
District 97				
Republican (26.6%)	$7,729.00	$7,729.00		
Democrat (73.4%)	$9,594.00	$9,594.00		

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APPENDIX D 2006 House Candidate Receipts

District & Percentage of the Vote	Receipts	Contested District[1] Receipts	Competitive District[2] Receipts	Minor Party District Receipts
District 98				
Republican	XXX			
Democrat (100%)	$13,806.00			
District 99				
Republican (36.8%)	$19,126.00	$19,126.00		
Democrat (63.2%)	$28,525.00	$28,525.00		
District 100				
Republican (60%)	$29,573.00	$29,573.00		
Democrat (40%)	$12,740.00	$12,740.00		
District 101				
Republican (40.2%)	$35,758.00	$35,758.00	$35,758.00	
Democrat (58.8%)	$49,617.00	$49,617.00	$49,617.00	
District 102				
Republican (36.3%)	$30,004.00	$30,004.00		
Democrat (63.7%)	$11,870.00	$11,870.00		
District 103				
Republican (60%)	$37,844.00	$37,844.00		$37,844.00
Democrat (38.3%)	$8,753.00	$8,753.00		$8,753.00
Working Families (1.7%)	EXEMPT	EXEMPT		EXEMPT
District 104				
Republican (43.4%)	$32,986.00	$32,986.00	$32,986.00	
Democrat (56.6%)	$21,639.00	$21,639.00	$21,639.00	

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APPENDIX D 2006 House Candidate Receipts

District & Percentage of the Vote	Receipts	Contested District[1] Receipts	Competitive District[2] Receipts	Minor Party District Receipts
District 105				
Republican (100%)	$12,555.00			
Democrat	XXX			
District 106				
Republican (87.4%)	$4,475.00			$4,475.00
Democrat	XXX			XXX
Working Families (12.6%)	EXEMPT			EXEMPT
District 107				
Republican (100%)	$7,325.00			
Democrat	XXX			
District 108				
Republican (100%)	$9,915.00			
Democrat	XXX			
District 109				
Republican (41.8%)	$36,167.00	$36,167.00	$36,167.00	
Democrat (58.2%)	$38,093.00	$38,093.00	$38,093.00	
District 110				
Republican (33.5%)	$8,625.00	$8,625.00		
Democrat (66.5%)	$29,230.00	$29,230.00		
District 111				
Republican (100%)	$33,740.00			
Democrat	XXX			

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APPENDIX D 2006 House Candidate Receipts

District & Percentage of the Vote	Receipts	Contested District[1] Receipts	Competitive District[2] Receipts	Minor Party District Receipts
District 112				
Republican (100%)	$9,898.00			
Democrat	XXX			
District 113				
Republican (89.8%)	$1,910.00			$1,910.00
Democrat	XXX			XXX
Working Families (10.2%)	EXEMPT			EXEMPT
District 114				
Republican (66.9%)	$36,901.00	$36,901.00		
Democrat (33.1%)	$455.00	$455.00		
District 115				
Republican (22.6%)	$1,225.00	$1,225.00		
Democrat (77.4%)	$21,983.00	$21,983.00		
District 116				
Republican (14.6%)	EXEMPT	EXEMPT		EXEMPT
Democrat (76.8%)	$18,875.00	$18,875.00		$18,875.00
Petitioning (8.6%)	EXEMPT	EXEMPT		EXEMPT
District 117				
Republican (38.6%)	$26,744.00	$26,744.00		
Democrat (61.4%)	$27,997.00	$27,997.00		

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APPENDIX D 2006 House Candidate Receipts

District & Percentage of the Vote	Receipts	Contested District[1] Receipts	Competitive District[2] Receipts	Minor Party District Receipts
District 118				
Republican	XXX			
Democrat (100%)	$82,627.00			
District 119				
Republican (28.6%)	EXEMPT	EXEMPT		
Democrat (71.4%)	$30,789.00	$30,789.00		
District 120				
Republican (54%)	$40,353.00	$40,353.00	$40,353.00	
Democrat (46%)	$38,312.00	$38,312.00	$38,312.00	
District 121				
Republican (23.6%)	$1,685.00	$1,685.00		
Democrat (76.4%)	$17,870.00	$17,870.00		
District 122				
Republican (100%)	$7,050.00			
Democrat	XXX			
District 123				
Republican (62.5%)	$28,160.00	$28,160.00		
Democrat (37.5%)	$11,038.00	$11,038.00		
District 124				
Republican (11.9%)	EXEMPT	EXEMPT		
Democrat (88.1%)	$2,610.00	$2,610.00		

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APPENDIX D 2006 House Candidate Receipts

District & Percentage of the Vote	Receipts	Contested District[1] Receipts	Competitive District[2] Receipts	Minor Party District Receipts
District 125				
Republican (100%)	$2,144.00			
Democrat	XXX			
District 126				
Republican (15.5%)	$5,330.00	$5,330.00		
Democrat (84.5%)	$3,050.00	$3,050.00		
District 127				
Republican	XXX			
Democrat (100%)	$25,208.00			
District 128				
Republican (10.4%)	EXEMPT	EXEMPT		
Democrat (89.6%)	$10,205.00	$10,205.00		
District 129				
Republican	XXX			
Democrat (100%)	$0.00			
District 130				
Republican (12.9%)	EXEMPT	EXEMPT		
Democrat (87.1%)	$9,380.00	$9,380.00		
District 131				
Republican (90.8%)	$14,900.00			$14,900.00
Democrat	XXX			XXX
Working Families (9.2%)	EXEMPT			EXEMPT

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APPENDIX D 2006 House Candidate Receipts

District & Percentage of the Vote	Receipts	Contested District[1] Receipts	Competitive District[2] Receipts	Minor Party District Receipts
District 132				
Republican (39.3%)	$31,328.00	$31,328.00		
Democrat (60.7%)	$34,864.00	$34,864.00		
District 133				
Republican (47.2%)	$38,912.00	$38,912.00	$38,912.00	
Democrat (52.8%)	$33,687.00	$33,687.00	$33,687.00	
District 134				
Republican (49.9%)	$19,445.00	$19,445.00	$19,445.00	
Democrat (50.1%)	$39,290.00	$39,290.00	$39,290.00	
District 135				
Republican (88.3%)	$3,800.00			$3,800.00
Democrat	XXX			XXX
Green (11.7%)	EXEMPT			EXEMPT
District 136				
Republican (33.5%)	$10,918.00	$10,918.00		
Democrat (66.5%)	$25,155.00	$25,155.00		
District 137				
Republican (32.8%)	$8,500.00	$8,500.00		
Democrat (67.2%)	$19,078.00	$19,078.00		
District 138				
Republican (55.3%)	$36,408.00	$36,408.00	$36,408.00	
Democrat (44.7%)	$14,807.00	$14,807.00	$14,807.00	

[1] "Contested District" means a district with candidates from both major parties.

[2] "Competitive District" means a district where the major party candidates' vote totals were within 20% of one another.

[3] "Exempt" means a candidate who raised or spent less than $1,000.

APPENDIX D 2006 House Candidate Receipts

District & Percentage of the Vote	Receipts	Contested District[1] Receipts	Competitive District[2] Receipts	Minor Party District Receipts
District 139				
Republican (35.1%)	$6,830.00	$6,830.00		
Democrat (64.9%)	$22,687.00	$22,687.00		
District 140				
Republican (27.8%)	$10,470.00	$10,470.00		$10,470.00
Democrat (71%)	$21,018.00	$21,018.00		$21,018.00
Petitioning (1.2%)	EXEMPT	EXEMPT		EXEMPT
District 141				
Republican (100%)	$1,200.00			
Democrat	XXX			
District 142				
Republican (54.4%)	$69,470.00	$69,470.00	$69,470.00	
Democrat (45.6%)	$25,835.00	$25,835.00	$25,835.00	
District 143				
Republican (100%)	$5,365.00			
Democrat	XXX			
District 144				
Republican (29.5%)	$4,510.00	$4,510.00		
Democrat (70.5%)	$36,324.00	$36,324.00		
District 145				
Republican	XXX			
Democrat (100%)	$3,903.00			

[1] "Contested District" means a district with candidates from both major parties.

[2] "Competitive District" means a district where the major party candidates' vote totals were within 20% of one another.

[3] "Exempt" means a candidate who raised or spent less than $1,000.

APPENDIX D 2006 House Candidate Receipts

District & Percentage of the Vote	Receipts	Contested District[1] Receipts	Competitive District[2] Receipts	Minor Party District Receipts
District 146				
Republican	XXX			XXX
Democrat (94%)	$23,159.00			$23,159.00
Working Families (6%)	EXEMPT			EXEMPT
District 147				
Republican (46.9%)	$63,352.00	$63,352.00	$63,352.00	
Democrat (53.1%)	$90,060.00	$90,060.00	$90,060.00	
District 148				
Republican (30.9%)	$5,050.00	$5,050.00		
Democrat (69.1%)	$21,403.00	$21,403.00		
District 149				
Republican (100%)	$31,065.00			
Democrat	XXX			
District 150				
Republican (100%)	$13,600.00			
Democrat	XXX			
District 151				
Republican (50.9%)	$22,704.00	$22,704.00	$22,704.00	
Democrat (49.1%)	$26,575.00	$26,575.00	$26,575.00	

[1] "Contested District" means a district with candidates from both major parties.

[2] "Competitive District" means a district where the major party candidates' vote totals were within 20% of one another.

[3] "Exempt" means a candidate who raised or spent less than $1,000.

APPENDIX D 2006 House Candidate Receipts

District & Percentage of the Vote	Receipts	Contested District[1] Receipts	Competitive District[2] Receipts	Minor Party District Receipts
AVERAGE RECEIPTS:	$20,437.26	$22,106.32	$34,564.29	$16,621.69
MEDIAN RECEIPTS:	$19,078.00	$21,639.00	$33,377.00	$12,611.50

[1] "Contested District" means a district with candidates from both major parties.

[2] "Competitive District" means a district where the major party candidates' vote totals were within 20% of one another.

[3] "Exempt" means a candidate who raised or spent less than $1,000.

APPENDIX E 2008 SENATE CANDIDATE RECEIPTS & EXPENDITURES

District & Vote Percentage	CEP?	Qualifying Contributions	CEP Primary Grant	CEP General Election Grant	Personal Funds	TOTAL RECEIPTS	CEP Surplus Returned	EXPENDITURES	Additional Primary $$$[1]
District 1									
Republican									
(16.8%)	YES					**$7,831.00**			
Democrat									
(78.6%)	YES	$15,000.00	$74,975.00	$85,000.00	$25.00	**$175,000.00**	$15,061.25	$159,938.75	
Green (4.6%)	NO					**$150.00**			
*Democrat**	YES	$15,000.00	$75,100.00				$949.68		$90,100.00
District 2									
Republican									
(22.9%)	YES	$15,000.00		$85,000.00		**$100,000.00**	$553.63	$99,446.37	
Democrat									
(77.1%)	YES	$15,000.00		$85,000.00		**$100,000.00**	$2,313.64	$97,686.36	
District 3									
Republican	N/A					XXX			
Democrat									
(100%)	YES	$15,000.00		$25,500.00		**$40,500.00**	$6,552.23	$33,947.77	

* denotes a primary candidate

[1] "Additional Primary $$$" means campaign funding that is not reflected in the "Total Receipts" or "Total Expenditure" columns. In other words, it is the money spent by the losing primary candidate.

APPENDIX E 2008 SENATE CANDIDATE RECEIPTS & EXPENDITURES

District & Vote Percentage	CEP?	Qualifying Contributions	CEP Primary Grant	CEP General Election Grant	Personal Funds	TOTAL RECEIPTS	CEP Surplus Returned	EXPENDITURES	Additional Primary $$$[1]
District 4									
Republican (41.5%)	YES	$15,000.00		$85,000.00		**$100,000.00**	$528.40	**$99,471.60**	
Democrat (58.5%)	YES	$15,000.00		$85,000.00		**$100,000.00**	$110.39	**$99,889.61**	
District 5									
Republican (29.1%)	NO					**$11,565.00**			
Democrat (70.9%)	YES	$15,000.00		$84,950.00	$50.00	**$100,000.00**	$30,242.85	**$69,757.15**	
District 6									
Republican (31%)	YES	$15,000.00		$85,000.00		**$100,000.00**	$1,393.17	**$98,606.83**	
Democrat (69%)	YES	$15,000.00		$85,000.00		**$100,000.00**	$8,893.71	**$91,106.29**	
District 7									
Republican (54.9%)	YES	$15,000.00		$85,000.00		**$100,000.00**	$2,588.93	**$97,411.07**	
Democrat (45.1%)	YES	$15,000.00		$85,000.00		**$100,000.00**	$6,297.03	**$93,702.97**	

* denotes a primary candidate

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APPENDIX E 2008 SENATE CANDIDATE RECEIPTS & EXPENDITURES

District & Vote Percentage	CEP?	Qualifying Contributions	CEP Primary Grant	CEP General Election Grant	Personal Funds	TOTAL RECEIPTS	CEP Surplus Returned	EXPENDITURES	Additional Primary $$$[1]
District 8									
Republican									
(53.2%)	YES	$15,000.00	$35,000.00	$85,000.00		$135,000.00	$624.86	$134,375.14	
Democrat									
(46.8%)	YES	$15,000.00		$85,000.00		$100,000.00	$1,120.27	$98,879.73	
**Republican*	YES	$15,000.00	$34,390.68			$49,390.68	$2,525.48		$46,865.20
District 9									
Republican									
(42.2%)	YES	$15,000.00		$85,000.00		$100,000.00	$343.14	$99,656.86	
Democrat									
(57.8%)	YES	$15,000.00		$85,000.00		$100,000.00	$6,127.79	$93,872.21	
District 10									
Republican									
(10%)	NO					EXEMPT			
Democrat									
(90%)	YES	$15,000.00		$84,702.61	$297.39	$100,000.00	$13,766.05	$86,233.95	
District 11									
Republican						XXX			
Democrat									
(100%)	YES	$15,000.00		$25,400.00	$100.00	$40,500.00	$20,426.61	$20,073.39	

* denotes a primary candidate

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APPENDIX E 2008 SENATE CANDIDATE RECEIPTS & EXPENDITURES

District & Vote Percentage	CEP?	Qualifying Contributions	CEP Primary Grant	CEP General Election Grant	Personal Funds	TOTAL RECEIPTS	CEP Surplus Returned	EXPENDITURES	Additional Primary $$$[1]
District 12									
Republican (40.1%)	YES	$15,000.00		$84,626.20	$373.80	$100,000.00	$4,170.75	$95,829.25	
Democrat (59.9%)	YES	$15,000.00		$84,500.00	$500.00	$100,000.00	$3,289.03	$96,710.97	
District 13									
Republican (25.7%)	NO					$2,100.00			
Democrat (74.3%)	YES	$15,000.00		$84,900.00	$100.00	$100,000.00	$3,289.03	$96,710.97	
District 14									
Republican (37.3%)	YES	$15,000.00		$85,000.00		$100,000.00	$19.70	$99,980.30	
Democrat (62.7%)	YES	$15,000.00		$85,000.00		$100,000.00	$16,690.95	$83,309.05	
District 15									
Republican	N/A					XXX			
Democrat (80.4%)	YES	$15,000.00		$85,000.00		$100,000.00	$4,574.91	$95,425.09	
Working Families (19.6%)	YES	$15,000.00		$85,000.00		$100,000.00	$8,157.87	$91,842.13	

* denotes a primary candidate

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APPENDIX E 2008 SENATE CANDIDATE RECEIPTS & EXPENDITURES

District & Vote Percentage	CEP?	Qualifying Contributions	CEP Primary Grant	CEP General Election Grant	Personal Funds	TOTAL RECEIPTS	CEP Surplus Returned	EXPENDITURES	Additional Primary $$$[1]
District 16									
Republican									
(76.5%)	YES	$15,000.00		$51,000.00		$66,000.00	$5,479.31	$60,520.69	
Democrat	N/A					XXX			
Independent									
(23.5%)	NO					EXEMPT			
District 17									
Republican									
(34.8%)	YES	$15,000.00		$85,000.00		$100,000.00	$0.00	$100,000.00	
Democrat									
(65.2%)	NO					$92,640.00			
District 18									
Republican									
(32.5%)	NO					$760.00	$21.15		
Democrat									
(67.5%)	YES	$15,000.00		$85,000.00		$100,000.00	$12,751.84	$87,248.16	
District 19									
Republican	N/A					XXX			
Democrat									
(100%)	NO					$10,090.00	$60.59	$10,029.41	

* denotes a primary candidate

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APPENDIX E 2008 SENATE CANDIDATE RECEIPTS & EXPENDITURES

District & Vote Percentage	CEP?	Qualifying Contributions	CEP Primary Grant	CEP General Election Grant	Personal Funds	TOTAL RECEIPTS	CEP Surplus Returned	EXPENDITURES	Additional Primary $$$
District 20									
Republican									
(30.8%)	YES	$15,000.00		$84,900.00	$100.00	$100,000.00	$4,616.68	$95,383.32	
Democrat									
(67.7%)	YES	$15,000.00		$85,000.00		$100,000.00	$10,168.56	$89,831.44	
Libertarian									
(1.6%)	NO					EXEMPT			
District 21									
Republican									
(53.9%)	YES	$15,000.00		$85,000.00		$100,000.00	$1,938.01	$98,061.99	
Democrat									
(46.1%)	YES	$15,000.00		$84,785.73	$214.27	$100,000.00	$1,304.72	$98,695.28	
District 22									
Republican									
(45.3%)	YES	$15,000.00		$85,000.00		$100,000.00	$4,026.36	$95,973.64	
Democrat									
(54.7%)	YES	$15,000.00	$85,000.00	$85,000.00		$135,000.00	$49.30	$134,950.70	
*Democrat**	YES	$15,000.00	$34,965.01						$49,965.01

* denotes a primary candidate

"Additional Primary $$$" means campaign funding that is not reflected in the "Total Receipts" or "Total Expenditure" columns. In other words, it is the money spent by the losing primary candidate

APPENDIX E 2008 SENATE CANDIDATE RECEIPTS & EXPENDITURES

District & Vote Percentage	CEP?	Qualifying Contributions	CEP Primary Grant	CEP General Election Grant	Personal Funds	TOTAL RECEIPTS	CEP Surplus Returned	EXPENDITURES	Additional Primary $$$[1]
District 23									
Republican									
(9.8%)	NO					$4,135.00			
Democrat									
(90.2%)	YES	$15,000.00		$84,900.00	$100.00	$100,000.00	$5,345.05	$94,654.95	
District 24									
Republican									
(48.1%)	YES	$15,000.00		$85,000.00		$100,000.00	$105.96	$99,894.04	
Democrat									
(47%)	YES	$15,000.00	$35,000.00	$85,000.00		$135,000.00	$231.56	$134,768.44	
Petitioning									
(1.4%)	NO					EXEMPT			
**Democrat*	NO								$1,750.00
District 25									
Republican									
(30.2%)	YES	$15,000.00		$84,900.00	$100.00	$100,000.00	$40.69	$99,959.31	
Democrat									
(69.8%)	YES	$15,000.00		$84,150.00	$850.00	$100,000.00	$405.46	$99,594.54	

* denotes a primary candidate

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APPENDIX E 2008 SENATE CANDIDATE RECEIPTS & EXPENDITURES

District & Vote Percentage	CEP?	Qualifying Contributions	CEP Primary Grant	CEP General Election Grant	Personal Funds	TOTAL RECEIPTS	CEP Surplus Returned	EXPENDITURES	Additional Primary $$$
District 26									
Republican (52.9%)	YES	$15,000.00		$85,000.00		$100,000.00	$433.45	$99,566.55	
Democrat (47.1%)	YES	$15,000.00		$84,500.00	$500.00	$100,000.00	$164.87	$99,835.13	
District 27									
Republican	N/A					XXX		XXX	
Democrat (100%)	YES	$15,000.00		$24,168.00	$1,332.00	$40,500.00	$5,736.57	$34,763.43	
District 28									
Republican (61.5%)	YES	$15,000.00		$85,000.00		$100,000.00	$884.50	$99,115.50	
Democrat (38.5%)	YES	$15,000.00		$84,920.00	$80.00	$100,000.00	$2,927.68	$97,072.32	
District 29									
Republican (24.8%)	NO					$3,465.00			
Democrat (75.2%)	YES	$15,000.00		$85,000.00		$100,000.00	$2,095.69	$97,904.31	

* *denotes a primary candidate*

[1] "Additional Primary $$$" means campaign funding that is not reflected in the "Total Receipts" or "Total Expenditure" columns. In other words, it is the money spent by the losing primary candidate.

APPENDIX E 2008 SENATE CANDIDATE RECEIPTS & EXPENDITURES

District & Vote Percentage	CEP?	Qualifying Contributions	CEP Primary Grant	CEP General Election Grant	Personal Funds	TOTAL RECEIPTS	CEP Surplus Returned	EXPENDITURES	Additional Primary $$$
District 30									
Republican (65.3%)	YES	$15,000.00		$83,509.44	$1,490.56	$100,000.00	$42,789.82	$57,210.18	
Democrat (34.7%)	NO					$7,500.00			
District 31									
Republican	N/A					XXX			
Democrat (100%)	YES	$15,000.00		$28,866.50	$100.00	$43,966.50	$2,376.29	$41,590.21	
District 32									
Republican (56%)	YES	$15,000.00		$85,000.00		$100,000.00	$509.89	$99,490.11	
Democrat (44%)	YES	$15,000.00		$85,000.00		$100,000.00	$10,295.90	$89,704.10	
District 33									
Republican (35.5%)	YES	$15,000.00		$85,000.00		$100,000.00	$9,708.40	$90,291.60	
Democrat (61.1%)	YES	$15,000.00		$85,000.00		$100,000.00	$516.90	$99,483.10	
Green (3.4%)	NO					EXEMPT			

* denotes a primary candidate

[1] "Additional Primary $$$" means campaign funding that is not reflected in the "Total Receipts" or "Total Expenditure" columns. In other words, it is the money spent by the losing primary candidate.

APPENDIX E 2008 SENATE CANDIDATE RECEIPTS & EXPENDITURES

District & Vote Percentage	CEP?	Qualifying Contributions	CEP Primary Grant	CEP General Election Grant	Personal Funds	TOTAL RECEIPTS	CEP Surplus Returned	EXPENDITURES	Additional Primary $$$
District 34									
Republican									
(100%)	YES	$15,000.00		$24,608.50	$391.50	**$40,000.00**	$31,287.98	$8,712.02	
Democrat	N/A					XXX			
District 35									
Republican									
(100%)	NO					$33,138.00			
Democrat	N/A					XXX			
District 36									
Republican									
(58.2%)	NO					$93,433.00			
Democrat									
(39.6%)	NO					$11,430.00			
Green (2.2%)	NO					EXEMPT			
Average Receipts:						$81,216.83			
Median Receipts:						$100,000.00			

* denotes a primary candidate

"Additional Primary $$$" means campaign funding that is not reflected in the "Total Receipts" or "Total Expenditure" columns. In other words, it is the money spent by the losing primary candidate.

APPENDIX E 2008 SENATE CANDIDATE RECEIPTS & EXPENDITURES

District & Vote Percentage	CEP?	Qualifying Contributions	CEP Primary Grant	CEP General Election Grant	Personal Funds	TOTAL RECEIPTS	CEP Surplus Returned	EXPENDITURES	Additional Primary $$$[1]
CEP-Participating Average Expenditures:								$89,387.85	
CEP-Participating Median Expenditures								$96,891.65	

* denotes a primary candidate

[1] "Additional Primary $$$" means campaign funding that is not reflected in the "Total Receipts" or "Total Expenditure" columns. In other words, it is the money spent by the losing primary candidate.

APPENDIX F 2008 HOUSE CANDIDATE RECEIPTS & EXPENDITURES

District & Vote Percentage	CEP?	Qualifying Contributions	CEP Primary Grant	Trigger Funds	CEP General Election Grant	Personal Funds	TOTAL RECEIPTS	CEP Surplus Returned	EXPENDITURES	Additional Primary $$$
District 1										
Republican	N/A						XXX			
Democrat										
(94.9%)	NO						EXEMPT			
CT for Lieberman										
(5.1%)	NO						EXEMPT			
District 2										
Republican										
(45.7%)	YES	$5,000.00			$24,949.82	$50.18	$30,000.00	$930.13	$29,069.87	
Democrat										
(54.3%)	YES	$5,000.00		$630.00	$25,000.00		$30,630.00	$949.93	$29,680.07	
District 3										
Republican	N/A						XXX			
Democrat										
(100%)	NO						$5,691.00			

* Denotes a primary candidate

"Additional Primary $$$" means campaign funding that is not reflected in the "Total Receipts" or "Total Expenditures" columns. In other words, it is the money spent by the losing primary candidate.

APPENDIX F 2008 HOUSE CANDIDATE RECEIPTS & EXPENDITURES

District & Vote Percentage	CEP[2]	Qualifying Contributions	CEP Primary Grant	Trigger Funds	CEP General Election Grant	Personal Funds	TOTAL RECEIPTS	CEP Surplus Returned	EXPENDITURES	Additional Primary $$$[1]
District 4										
Republican	N/A						XXX			
Democrat										
(92.7%)	YES	$5,000.00			$25,000.00		$30,000.00	$10,839.95	$19,160.05	
CT for Lieberman										
(7.3%)	NO						EXEMPT			
District 5										
Republican	N/A						XXX			
Democrat										
(82%)	YES	$5,000.00	$24,995.00		$14,789.01	$5.00	$44,789.01	$827.10	$43,961.91	
Petitioning										
(16.2%)	NO						$3,785.00			
Petitioning										
(1.8%)	NO						$20.00			
*Democrat**	YES	$5,000.00	$24,708.00							$29,708.00
District 6										
Republican	N/A						XXX			
Democrat										
(100%)	YES	$5,000.00	$25,000.00		$7,500.00		$37,500.00			
*Democrat**	YES	$5,000.00	$26,115.00							$31,115.00

* Denotes a primary candidate

[1] "Additional Primary $$$" means campaign funding that is not reflected in the "Total Receipts" or "Total Expenditures" columns. In other words, it is the money spent by the losing primary candidate.

APPENDIX F 2008 HOUSE CANDIDATE RECEIPTS & EXPENDITURES

District & Vote Percentage	CEP?	Qualifying Contributions	CEP Primary Grant	Trigger Funds	CEP General Election Grant	Personal Funds	TOTAL RECEIPTS	CEP Surplus Returned	EXPENDITURES	Additional Primary $$$[1]
District 7										
Republican	N/A						XXX			
Democrat (100%)	NO						EXEMPT			
District 8										
Republican (46.7%)	YES	$5,000.00			$24,509.10	$490.90	**$30,000.00**	$90.47	**$29,909.53**	
Democrat (53.3%)	YES	$5,000.00			$25,000.00		**$30,000.00**	$1,707.65	**$28,292.35**	
**Republican*										
District 9										
Republican (40.4%)	YES	$5,000.00	$10,000.00		$25,000.00		$40,000.00	$931.63	**$39,068.37**	
Democrat (59.6%)	YES	$5,000.00	$10,000.00		$25,000.00		**$40,000.00**	$3,976.53	**$36,023.47**	
*Republican**	YES	$5,000.00	$10,000.00					$405.73		$14,594.27
*Republican**	NO									$3,035.00
*Democrat**	YES	$5,000.00	$10,000.00					$2,017.11		$12,982.89

* Denotes a primary candidate.

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APPENDIX F 2008 HOUSE CANDIDATE RECEIPTS & EXPENDITURES

District & Vote Percentage	CEP?	Qualifying Contributions	CEP Primary Grant	Trigger Funds	CEP General Election Grant	Personal Funds	TOTAL RECEIPTS	CEP Surplus Returned	EXPENDITURES	Additional Primary $$$[1]
District 10										
Republican	N/A						XXX			
Democrat										
(100%)	YES	$5,000.00			$7,240.00	$260.00	**$12,500.00**	$1,981.37	**$10,518.63**	
District 11										
Republican	N/A						XXX			
Democrat										
(100%)	NO						**$6,635.00**			
District 12										
Republican	N/A						XXX			
Democrat										
(100%)	YES	$5,000.00			$7,400.00	$100.00	**$12,500.00**	$303.33	$12,196.67	
District 13										
Republican										
(33.5%)	YES	$5,000.00			$25,000.00		**$30,000.00**	$437.43	**$29,562.57**	
Democrat										
(66.5%)	YES	$5,000.00			$25,000.00		**$30,000.00**	$3,775.37	**$29,224.63**	

* Denotes a primary candidate

[1] "Additional Primary $$$" means campaign funding that is not reflected in the "Total Receipts" or "Total Expenditures" columns. In other words, it is the money spent by the losing primary candidate.

APPENDIX F 2008 HOUSE CANDIDATE RECEIPTS & EXPENDITURES

District & Vote Percentage	CEP[2]	Qualifying Contributions	CEP Primary Grant	Trigger Funds	CEP General Election Grant	Personal Funds	TOTAL RECEIPTS	CEP Surplus Returned	EXPENDITURES	Additional Primary $$$[1]
District 14										
Republican (54.6%)	YES	$5,000.00			$25,000.00		**$30,000.00**	$342.46	**$29,657.54**	
Democrat (45.4%)	YES	$5,000.00			$25,000.00		**$30,000.00**	$470.09	**$29,529.91**	
District 15										
Republican (22.4%)	NO						**$2,857.00**			
Democrat (77.6%)	NO						**$445.00**			
District 16										
Republican (40.6%)	YES	$5,000.00			$25,000.00		**$30,000.00**	$0.00	**$30,000.00**	
Democrat (56.4%)	YES	$5,000.00			$25,000.00		**$30,000.00**	$689.00	**$29,311.00**	
Working Familes (2.5%)	YES	$5,000.00			$16,667.00		**$21,667.00**	$3,212.11	**$18,454.89**	
Petitioning (0.4%)	NO						**EXEMPT**			

* *Denotes a primary candidate*

[1] "Additional Primary $$$" means campaign funding that is not reflected in the "Total Receipts" or "Total Expenditures" columns. In other words, it is the money spent by the losing primary candidate.

APPENDIX F 2008 HOUSE CANDIDATE RECEIPTS & EXPENDITURES

District & Vote Percentage	CEP?	Qualifying Contributions	CEP Primary Grant	Trigger Funds	CEP General Election Grant	Personal Funds	TOTAL RECEIPTS	CEP Surplus Returned	EXPENDITURES	Additional Primary $$$[1]
District 17										
Republican										
(53.2%)	YES	$5,000.00	$9,409.02		$25,000.00	$590.98	**$40,000.00**	$3,468.10	**$36,531.90**	
Democrat										
(46.8%)	YES	$5,000.00			$25,000.00		**$30,000.00**	$578.85	**$29,421.15**	
*Republican**	YES	$5,000.00	$10,000.00							
District 18										
Republican										
(26.6%)	YES	$5,000.00			$24,995.00		**$29,995.00**	$177.34	**$29,817.66**	
Democrat										
(73.4%)	YES	$5,000.00			$24,995.00	$5.00	**$30,000.00**	$15,155.85	**$14,844.15**	
District 19										
Republican										
(36.9%)	YES	$5,000.00			$24,904.25	$95.75	**$30,000.00**	$848.81	**$29,151.19**	
Democrat										
(63.1%)	YES	$5,000.00			$25,000.00		**$30,000.00**	$1,311.29	**$28,688.71**	

* Denotes a primary candidate.

[1] "Additional Primary $$$" means campaign funding that is not reflected in the "Total Receipts" or "Total Expenditures" columns. In other words, it is the money spent by the losing primary candidate.

APPENDIX F 2008 HOUSE CANDIDATE RECEIPTS & EXPENDITURES

District & Vote Percentage	CEP?	Qualifying Contributions	CEP Primary Grant	Trigger Funds	CEP General Election Grant	Personal Funds	TOTAL RECEIPTS	CEP Surplus Returned	EXPENDITURES	Additional Primary $$$[1]
District 20										
Republican										
(24.1%)	NO						EXEMPT			
Democrat										
(74%)	YES	$5,000.00			$24,484.25	$515.75	$30,000.00	$14,610.56	$15,389.44	
CT for Lieberman										
(1.9%)	NO						EXEMPT			
District 21										
Republican	N/A						XXX			
Democrat										
(100%)	YES	$5,000.00			$7,500.00		$12,500.00	$6,453.61	$6,046.39	
District 22										
Republican										
(32.3%)	YES	$5,000.00			$25,000.00		$30,000.00	$752.89	$29,247.11	
Democrat										
(67.7%)	YES	$5,000.00			$25,000.00		$30,000.00	$17,886.48	$12,113.52	

* Denotes a primary candidate.

[1] "Additional Primary $$$" means campaign funding that is not reflected in the "Total Receipts" or "Total Expenditures" columns. In other words, it is the money spent by the losing primary candidate.

APPENDIX F 2008 HOUSE CANDIDATE RECEIPTS & EXPENDITURES

District & Vote Percentage	CEP?	Qualifying Contributions	CEP Primary Grant	Trigger Funds	CEP General Election Grant	Personal Funds	TOTAL RECEIPTS	CEP Surplus Returned	EXPENDITURES	Additional Primary $$$[1]
District 23										
Republican (55.3%)	YES	$5,000.00			$24,011.05	$988.95	**$30,000.00**	$2,661.64	**$27,338.36**	
Democrat (44.7%)	YES	$5,000.00			$24,980.00		**$29,980.00**	$493.15	**$29,486.85**	
District 24										
Republican (22.4%)	YES	$5,000.00			$25,000.00		**$30,000.00**	$8,805.10	**$21,194.90**	
Democrat (75.2%)	YES	$5,000.00			$24,700.00	$300.00	**$30,000.00**	$2,222.69	**$27,777.31**	
Concerned Citizens (2.4%)	NO						**EXEMPT**			
District 25										
Republican (18.3%)	NO						**XXX**			
Democrat (81.7%)	YES	$5,000.00			$25,000.00		**$30,000.00**	$11,007.51	**$18,992.49**	

* Denotes a primary candidate.

[1] "Additional Primary $$$" means campaign funding that is not reflected in the "Total Receipts" or "Total Expenditures" columns. In other words, it is the money spent by the losing primary candidate

APPENDIX F 2008 HOUSE CANDIDATE RECEIPTS & EXPENDITURES

District & Vote Percentage	CEP?	Qualifying Contributions	CEP Primary Grant	CEP General Trigger Funds	CEP General Election Grant	Personal Funds	TOTAL RECEIPTS	CEP Surplus Returned	EXPENDITURES	Additional Primary $$$[1]
District 26										
Republican (19.2%)	NO						**EXEMPT**			
Democrat (80.8%)	YES	$5,000.00			$25,000.00		**$30,000.00**	$4,194.98	$25,805.02	
District 27										
Republican (29.8%)	YES	$5,000.00			$25,000.00		**$30,000.00**	$1.51	$29,998.49	
Democrat (70.2%)	YES	$5,000.00			$24,503.08	$496.92	**$30,000.00**	$8,155.77	$21,844.23	
District 28										
Republican (35.8%)	NO						**$3,770.00**			
Democrat (64.2%)	YES	$5,000.00			$25,000.00		**$30,000.00**	$7,632.70	$22,376.30	
District 29										
Republican	N/A						**XXX**			
Democrat (91.3%)	YES	$5,000.00			$15,000.00		**$20,000.00**	$9,583.74	$10,416.26	
CT for Lieberman (8.7%)	NO						**EXEMPT**			

* Denotes a primary candidate

[1] "Additional Primary $$$" means campaign funding that is not reflected in the "Total Receipts" or "Total Expenditures" columns. In other words, it is the money spent by the losing primary candidate.

APPENDIX F 2008 HOUSE CANDIDATE RECEIPTS & EXPENDITURES

District & Vote Percentage	CEP?	Qualifying Contributions	CEP Primary Grant	Trigger Funds	CEP General Election Grant	Personal Funds	TOTAL RECEIPTS	CEP Surplus Returned	EXPENDITURES	Additional Primary $$$
District 30										
Republican	N/A						XXX			
Democrat										
(100%)	NO						$4,644.00			
District 31										
Republican										
(47.8%)	YES	$5,000.00			$25,000.00		$30,000.00	$1,747.87	$28,252.13	
Democrat										
(52.2%)	YES	$5,000.00			$25,000.00		$30,000.00	$965.20	$29,034.80	
District 32										
Republican										
(32.7%)	YES	$5,000.00			$25,000.00		$30,000.00	$152.28	$29,847.72	
Democrat										
(67.3%)	YES	$5,000.00			$24,950.00	$50.00	$30,000.00	$5,602.07	$24,397.93	
District 33										
Republican										
(33.1%)	YES	$5,000.00			$24,900.00		$29,900.00	$31.58	$29,868.42	
Democrat										
(66.9%)	YES	$5,000.00			$25,000.00		$30,000.00	$15,753.14	$14,246.86	

* Denotes a primary candidate

("Additional Primary $$$" means campaign funding that is not reflected in the "Total Receipts" or "Total Expenditures" columns. In other words, it is the money spent by the losing primary candidate.

APPENDIX F 2008 HOUSE CANDIDATE RECEIPTS & EXPENDITURES

District & Vote Percentage	CEP*	Qualifying Contributions	CEP Primary Grant	Trigger Funds	CEP General Election Grant	Personal Funds	TOTAL RECEIPTS	CEP Surplus Returned	EXPENDITURES	Additional Primary $$$†
District 34										
Republican										
(40.4%)	YES	$5,000.00			$25,000.00		$30,000.00	$1,499.37	$28,500.63	
Democrat										
(59.6%)	YES	$5,000.00			$25,000.00		$30,000.00	$1,788.28	$28,211.72	
District 35										
Republican	N/A						XXX			
Democrat										
(100%)	NO						$5,874.00			
District 36										
Republican										
(32%)	NO						$2,490.00			
Democrat										
(68%)	YES	$5,000.00			$24,990.00	$10.00	$30,000.00	$5,185.71	$28,814.29	
District 37										
Republican										
(32%)	YES	$5,000.00			$25,000.00		$30,000.00	$8,296.48	$21,703.52	
Democrat										
(68%)	YES	$5,000.00			$25,000.00		$30,000.00	$7,264.49	$22,735.51	

* Denotes a primary candidate

† "Additional Primary $$$" means campaign funding that is not reflected in the "Total Receipts" or "Total Expenditures" columns. In other words, it is the money spent by the losing primary candidate.

APPENDIX F 2008 HOUSE CANDIDATE RECEIPTS & EXPENDITURES

District & Vote Percentage	CEP?	Qualifying Contributions	CEP Primary Grant	Trigger Funds	CEP General Election Grant	Personal Funds	TOTAL RECEIPTS	CEP Surplus Returned	EXPENDITURES	Additional Primary $$$
District 38										
Republican	N/A						XXX			
Democrat										
(100%)	NO						$5,157.00			
District 39										
Republican										
(17.9%)	NO						EXEMPT			
Democrat										
(73.5%)	NO						$2,706.00			
Green (8.5%)	NO						$368.00			
District 40										
Republican	N/A						XXX			
Democrat										
(100%)	NO						EXEMPT			
District 41										
Republican										
(38.6%)	YES	$5,000.00			$25,000.00		$30,000.00	$1,914.10	$28,085.90	
Democrat										
(61.4%)	YES	$5,000.00			$25,000.00		$30,000.00	$4,647.92	$25,352.08	

* Denotes a primary candidate

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APPENDIX F 2008 HOUSE CANDIDATE RECEIPTS & EXPENDITURES

District & Vote Percentage	CEP?	Qualifying Contributions	CEP Primary Grant	Trigger Funds	CEP General Election Grant	Personal Funds	TOTAL RECEIPTS	CEP Surplus Returned	EXPENDITURES	Additional Primary $$$*
District 42										
Republican	N/A						XXX			
Democrat										
(100%)	NO						$12,344.00			
District 43										
Republican										
(36.3%)	YES	$5,000.00			$24,900.00	$100.00	$30,000.00	$5,886.79	$24,113.21	
Democrat										
(63.7%)	YES	$5,000.00			$24,700.00	$300.00	$30,000.00	$529.86	$29,470.14	
District 44										
Republican										
(32.4%)	NO						$2,440.00			
Democrat										
(67.6%)	YES	$5,000.00			$25,000.00		$30,000.00	$2,267.68	$27,732.32	
District 45										
Republican										
(25%)	NO						EXEMPT			
Democrat										
(75%)	NO						$1,987.00			

* Denotes a primary candidate.

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APPENDIX F 2008 HOUSE CANDIDATE RECEIPTS & EXPENDITURES

District & Vote Percentage	CEP?	Qualifying Contributions	CEP Primary Grant	Trigger Funds	CEP General Election Grant	Personal Funds	TOTAL RECEIPTS	CEP Surplus Returned	EXPENDITURES	Additional Primary $$$
District 46										
Republican	N/A						XXX			
Democrat										
(100%)	NO						$2,624.00			
District 47										
Republican										
(54.2%)	YES	$5,000.00			$24,946.45	$53.55	$30,000.00	$231.12	$29,768.88	
Democrat										
(45.8%)	YES	$5,000.00			$25,000.00		$30,000.00	$2,229.53	$27,770.47	
District 48										
Republican	N/A						XXX			
Democrat										
(100%)	YES	$5,000.00			$7,500.00		$12,500.00	$7,970.28	$4,529.72	
District 49										
Republican										
(28.7%)	YES	$5,000.00			$24,724.60	$275.40	$30,000.00	$3,784.48	$26,215.52	
Democrat										
(70.3%)	YES	$5,000.00	$24,800.00		$24,211.25	$200.00	$54,211.25	$3,372.55	$50,838.70	
Concerned Citizens (1.1%)	NO						EXEMPT			
*Democrat**	NO									$5,182.00[1]

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APPENDIX F 2008 HOUSE CANDIDATE RECEIPTS & EXPENDITURES

District & Vote Percentage	CEP?	Qualifying Contributions	CEP Primary Grant	Trigger Funds	CEP General Election Grant	Personal Funds	TOTAL RECEIPTS	CEP Surplus Returned	EXPENDITURES	Additional Primary $$$*
District 50										
Republican										
(50.5%)	YES	$5,000.00			$25,000.00		$30,000.00	$383.36	$29,616.64	
Democrat										
(49.5%)	YES	$5,000.00			$25,000.00		$30,000.00	$1,706.77	$28,293.23	
District 51										
Republican	N/A						XXX			
Democrat										
(100%)	NO						EXEMPT			
District 52										
Republican										
(65.3%)	YES	$5,000.00			$25,000.00		$30,000.00	$70.84	$29,929.16	
Democrat										
(33.4%)	YES	$5,000.00			$25,000.00		$30,000.00	$699.00	$29,301.00	
Christian Center (1.3%)	NO						EXEMPT			
District 53										
Republican										
(43.4%)	YES	$5,000.00			$25,000.00		$30,000.00	$0.00	$30,000.00	
Democrat										
(56.6%)	YES	$5,000.00			$25,000.00		$30,000.00	$234.57	$29,765.43	

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APPENDIX F 2008 HOUSE CANDIDATE RECEIPTS & EXPENDITURES

District & Vote Percentage	CEP?	Qualifying Contributions	CEP Primary Grant	Trigger Funds	CEP General Election Grant	Personal Funds	TOTAL RECEIPTS	CEP Surplus Returned	EXPENDITURES	Additional Primary $$$[1]
District 54										
Republican	N/A						XXX			
Democrat										
(100%)	NO						$6,247.00			
District 55										
Republican										
(100%)	YES	$5,000.00			$7,500.00		$12,500.00	$2,830.22	$9,669.78	
Democrat	N/A						XXX			
District 56										
Republican	N/A						XXX			
Democrat										
(100%)	YES	$5,000.00			$7,500.00		$12,500.00	$6,865.48	$5,634.52	
District 57										
Republican										
(44.4%)	YES	$5,000.00			$25,000.00		$30,000.00	$4,067.64	$25,932.36	
Democrat										
(55.6%)	YES	$5,000.00			$25,000.00		$30,000.00	$3,926.54	$26,073.46	

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APPENDIX F 2008 HOUSE CANDIDATE RECEIPTS & EXPENDITURES

District & Vote Percentage	CEP?	Qualifying Contributions	CEP Primary Grant	Trigger Funds	CEP General Election Grant	Personal Funds	TOTAL RECEIPTS	CEP Surplus Returned	EXPENDITURES	Additional Primary $$$
District 58										
Republican										
(32.7%)	YES	$5,000.00			$24,949.99	$50.01	**$30,000.00**	$1,869.50	**$28,130.50**	
Democrat										
(67.3%)	YES	$5,000.00			$24,950.00	$50.00	**$30,000.00**	$9,083.39	**$20,916.61**	
District 59										
Republican										
(27.5%)	NO						**$4,270.00**			
Democrat										
(72.5%)	YES	$5,000.00			$25,000.00		**$30,000.00**	$10,644.79		
District 60										
Republican										
(27.7%)	YES	$5,000.00			$24,907.90	$92.10	**$30,000.00**	$3,022.98	**$26,977.02**	
Democrat										
(59.1%)	YES	$5,000.00			$25,000.00		**$30,000.00**	$15,783.37	**$14,216.63**	
Petitioning										
(13.3%)	NO						**$5,097.00**			

* Denotes a primary candidate.

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APPENDIX F 2008 HOUSE CANDIDATE RECEIPTS & EXPENDITURES

District & Vote Percentage	CEP?	Qualifying Contributions	CEP Primary Grant	Trigger Funds	CEP General Election Grant	Personal Funds	TOTAL RECEIPTS	CEP Surplus Returned	EXPENDITURES	Additional Primary $$$[1]
District 61										
Republican										
(47.2%)	YES	$5,000.00			$25,000.00		$30,000.00	$4,517.19	$25,482.81	
Democrat										
(52.8%)	YES	$5,000.00			$25,000.00		$30,000.00	$4,302.91	$25,697.09	
District 62										
Republican										
(47.7%)	YES	$5,000.00			$24,950.00	$50.00	$30,000.00	$7,659.05	$22,340.95	
Democrat										
(52.3%)	YES	$5,000.00			$25,000.00		$30,000.00	$2,260.31	$27,739.69	
District 63										
Republican										
(100%)	YES	$5,000.00			$25,000.00		$30,000.00	$1,362.78		
Democrat	NO						$6,506.99			
District 64										
Republican	N/A						XXX			
Democrat										
(100%)	YES	$5,000.00			$7,500.00		$12,500.00	$8,944.97	$3,555.03	

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APPENDIX F 2008 HOUSE CANDIDATE RECEIPTS & EXPENDITURES

District & Vote Percentage	CEP?	Qualifying Contributions	CEP Primary Grant	Trigger Funds	CEP General Election Grant	Personal Funds	TOTAL RECEIPTS	CEP Surplus Returned	EXPENDITURES	Additional Primary $$$[1]
District 65										
Republican										
(43.8%)	YES	$5,000.00			$25,000.00		**$30,000.00**	$5,706.08	**$24,293.92**	
Democrat										
(56.2%)	YES	$5,000.00			$25,000.00		**$30,000.00**	$6,743.62	**$23,256.38**	
District 66										
Republican										
(60%)	YES	$5,000.00			$25,000.00		**$30,000.00**	$0.00	**$30,000.00**	
Democrat										
(38.8%)	YES	$5,000.00			$25,000.00		**$30,000.00**	$1,146.56	**$28,853.44**	
Concerned Citizens										
(1.2%)	NO						**EXEMPT**			
District 67										
Republican										
(100%)	NO						**$3,655.00**			
Democrat	N/A						**XXX**			
District 68										
Republican										
(100%)	NO						**$1,475.00**			
Democrat	N/A						**XXX**			

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APPENDIX F 2008 HOUSE CANDIDATE RECEIPTS & EXPENDITURES

District & Vote Percentage	CEP?	Qualifying Contributions	CEP Primary Grant	Trigger Funds	CEP General Election Grant	Personal Funds	TOTAL RECEIPTS	CEP Surplus Returned	EXPENDITURES	Additional Primary $$$[1]
District 69										
Republican										
(100%)	NO						$3,620.00			
Democrat	NA						XXX			
District 70										
Republican										
(87.4%)	NO						$10,015.00			
Democrat	N/A						XXX			
Ind. Party Waterbury TC										
(12.6%)	NO						EXEMPT			
District 71										
Republican										
(52.4%)	YES	$5,000.00			$24,960.00	$40.00	$30,000.00	$1,489.36	$28,510.64	
Democrat										
(35.6%)	YES	$5,000.00			$24,990.00	$10.00	$30,000.00	$1,331.89	$28,668.11	
Independent										
(12%)	YES	$5,000.00			$25,000.00		$30,000.00	$3,921.79	$26,078.21	

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APPENDIX F 2008 HOUSE CANDIDATE RECEIPTS & EXPENDITURES

District & Vote Percentage	CEP?	Qualifying Contributions	CEP Primary Grant	Trigger Funds	CEP General Election Grant	Personal Funds	TOTAL RECEIPTS	CEP Surplus Returned	EXPENDITURES	Additional Primary $$$[1]
District 72										
Republican	N/A						XXX			
Democrat										
(87.7%)	YES	$5,000.00			$14,800.00	$200.00	$20,000.00	$1,268.57	$18,731.43	
Ind. Party Waterbury										
TC (12.3%)	NO						EXEMPT			
District 73										
Republican	N/A						XXX			
Democrat										
(79.8%)	YES	$5,000.00			$15,000.00		$20,000.00	$368.15	$19,631.85	
Independent										
(20.2%)	NO						EXEMPT			
District 74										
Republican										
(79.8%)	YES	$5,000.00	$10,000.00		$24,300.00		$39,300.00	$245.55	$39,054.45	
Democrat	N/A						XXX			
Independent										
(20.2%)	YES	$5,000.00			$16,209.49	$129.74	$21,339.23	$3.48	$21,335.75	
*Republican**	NO									EXEMPT

* Denotes a primary candidate.

[1] "Additional Primary $$$" means campaign funding that is not reflected in the "Total Receipts" or "Total Expenditures" columns. In other words, it is the money spent by the losing primary candidate.

APPENDIX F 2008 HOUSE CANDIDATE RECEIPTS & EXPENDITURES

District & Vote Percentage	CEP[2]	Qualifying Contributions	CEP Primary Grant	Trigger Funds	CEP General Election Grant	Personal Funds	TOTAL RECEIPTS	CEP Surplus Returned	EXPENDITURES	Additional Primary $$$[1]
District 75										
Republican (20.9%)	YES	$5,000.00			$25,000.00		$30,000.00	$411.05	$29,588.95	
Democrat (73.8%)	YES	$5,000.00			$25,000.00		$30,000.00	$1,403.21	$28,596.79	
Independent (0.9%)	NO						$2,021.00			
Concerned Citizens (4.4%)	NO						EXEMPT			
District 76										
Republican (63.2%)	YES	$5,000.00			$24,900.00	$100.00	$30,000.00	$0.00	$30,000.00	
Democrat (36.8%)	YES	$5,000.00			$24,900.00	$100.00	$30,000.00	$852.20	$29,147.80	
District 77										
Republican (44.4%)	YES	$5,000.00			$25,000.00		$30,000.00	$408.44	$29,591.56	
Democrat (55.6%)	YES	$5,000.00			$24,823.36	$176.37	$29,999.73	$11.28	$29,958.45	

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APPENDIX F 2008 HOUSE CANDIDATE RECEIPTS & EXPENDITURES

District & Vote Percentage	CEP?	Qualifying Contributions	CEP Primary Grant	Trigger Funds	CEP General Election Grant	Personal Funds	TOTAL RECEIPTS	CEP Surplus Returned	EXPENDITURES	Additional Primary $$$
District 78										
Republican (61.9%)	YES	$5,000.00			$24,700.00	$300.00	**$30,000.00**	$1,723.42	**$28,276.58**	
Democrat (38.1%)	YES	$5,000.00			$25,000.00		**$30,000.00**	$1,064.75	**$28,935.25**	
District 79										
Republican (24.3%)	NO						**EXEMPT**			
Democrat (72.6%)	YES	$5,000.00			$25,000.00		**$30,000.00**	$10,408.85	**$19,591.15**	
District 80										
Republican	N/A						**XXX**			
Democrat (80.9%)	YES	$5,000.00	$10,000.00		$15,000.00		**$30,000.00**	$721.61	**$29,278.39**	
Concerned Citizens (9.8%)	NO						**EXEMPT**			
Petitioning (9.3%)	NO						**EXEMPT**			
*Democrat**	YES	$5,000.00	$10,000.00							$15,000.00

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APPENDIX F 2008 HOUSE CANDIDATE RECEIPTS & EXPENDITURES

District & Vote Percentage	CEP?	Qualifying Contributions	CEP Primary Grant	Trigger Funds	CEP General Election Grant	Personal Funds	TOTAL RECEIPTS	CEP Surplus Returned	EXPENDITURES	Additional Primary $$$
District 81										
Republican (30.6%)	NO						$1,686.00			
Democrat (66.4%)	YES	$5,000.00			$24,975.00	$25.00	$30,000.00	$20,900.95	$9,099.05	
Concerned Citizens (3%)	NO						EXEMPT			
District 82										
Republican (23.8%)	NO						$724.00			
Democrat (76.2%)	YES	$5,000.00			$24,500.00	$500.00	$30,000.00	$17,886.21	$12,113.79	
District 83										
Republican (32.2%)	NO						EXEMPT			
Democrat (67.8%)	YES	$5,000.00			$24,900.00	$100.00	$30,000.00	$14,261.37	$15,783.63	

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APPENDIX F 2008 HOUSE CANDIDATE RECEIPTS & EXPENDITURES

District & Vote Percentage	CEP?	Qualifying Contributions	CEP Primary Grant	Trigger Funds	CEP General Election Grant	Personal Funds	TOTAL RECEIPTS	CEP Surplus Returned	EXPENDITURES	Additional Primary $$$
District 84										
Republican										
(17.3%)	NO						EXEMPT			
Democrat										
(82.7%)	YES	$5,000.00			$24,900.62	$99.38	$30,000.00	$10,323.16	$19,676.84	
District 85										
Republican										
(37%)	YES	$5,000.00			$25,000.00		$30,000.00	$249.73	$29,750.27	
Democrat										
(63%)	YES	$5,000.00			$25,000.00		$30,000.00	$5,571.72	$24,428.28	
District 86										
Republican										
(100%)	NO						$6,065.00			
Democrat	N/A						XXX			
District 87										
Republican										
(38%)	YES	$5,000.00			$24,975.00	$25.00	$30,000.00	$350.71	$29,649.29	
Democrat										
(62%)	YES	$5,000.00			$25,000.00		$30,000.00	$4,737.04	$25,262.96	

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APPENDIX F 2008 HOUSE CANDIDATE RECEIPTS & EXPENDITURES

District & Vote Percentage	CEP*	Qualifying Contributions	CEP Primary Grant	Trigger Funds	CEP General Election Grant	Personal Funds	TOTAL RECEIPTS	CEP Surplus Returned	EXPENDITURES	Additional Primary $$$
District 88										
Republican	N/A						XXX			
Democrat										
(64.7%)	YES	$5,000.00			$25,000.00		$30,000.00	$8,909.87	$21,090.13	
Petitioning										
(35.3%)	YES	$5,000.00			$25,000.00		$30,000.00	$3.93	$29,996.07	
District 89										
Republican										
(33.7%)	NO						EXEMPT			
Democrat										
(66.3%)	YES	$5,000.00			$25,000.00		$30,000.00	$6,859.14	$23,140.86	
District 90										
Republican	N/A						XXX			
Democrat										
(84.5%)	YES	$5,000.00			$15,000.00		$20,000.00	$3,333.46	$16,666.54	
CT for Lieberman										
(15.5%)	NO						EXEMPT			

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APPENDIX F 2008 HOUSE CANDIDATE RECEIPTS & EXPENDITURES

District & Vote Percentage	CEP?	Qualifying Contributions	CEP Primary Grant	Trigger Funds	CEP General Election Grant	Personal Funds	TOTAL RECEIPTS	CEP Surplus Returned	EXPENDITURES	Additional Primary $$$*
District 91										
Republican	N/A						XXX			
Democrat										
(93%)	NO						$5,158.00			
Petitioning										
(7%)	NO						$2,927.00			
District 92										
Republican										
(8.8%)	NO						EXEMPT			
Democrat										
(91.2%)	YES	$5,000.00			$24,924.56	$75.44	$30,000.00	$8,692.40	$21,307.60	
District 93										
Republican	N/A						XXX			
Democrat										
(100%)	NO						$2,290.00			

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APPENDIX F 2008 HOUSE CANDIDATE RECEIPTS & EXPENDITURES

District & Vote Percentage	CEP?	Qualifying Contributions	CEP Primary Grant	Trigger Funds	CEP General Election Grant	Personal Funds	TOTAL RECEIPTS	CEP Surplus Returned	EXPENDITURES	Additional Primary $$$
District 94										
Republican	N/A						XXX			
Democrat										
(86.1%)	YES	$5,000.00	$24,887.44			$112.56	$30,000.00	$3.92	$29,996.08	
Petitioning										
(13.9%)	NO						$795.00			
*Democrat**	YES	$5,000.00	$24,300.00							$29,300.00
District 95										
Republican	N/A						XXX			
Democrat										
(100%)	NO						$750.00			
District 96										
Republican	N/A						XXX			
Democrat										
(100%)	NO						EXEMPT			
District 97										
Republican	N/A						XXX			
Democrat										
(100%)	NO						EXEMPT			

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APPENDIX F 2008 HOUSE CANDIDATE RECEIPTS & EXPENDITURES

District & Vote Percentage	CEP?	Qualifying Contributions	CEP Primary Grant	Trigger Funds	CEP General Election Grant	Personal Funds	TOTAL RECEIPTS	CEP Surplus Returned	EXPENDITURES	Additional Primary $$$
District 98										
Republican	N/A						XXX			
Democrat										
(100%)	YES	$5,000.00			$6,650.40	$849.60	$12,500.00	$4,490.01	$8,009.99	
District 99										
Republican										
(37.5%)	YES	$5,000.00			$25,000.00		$30,000.00	$632.97	$29,367.03	
Democrat										
(62.5%)	YES	$5,000.00			$24,900.00	$100.00	$30,000.00	$1,358.45	$28,641.55	
District 100										
Republican										
(48.3%)	YES	$5,000.00			$25,000.00		$30,000.00	$421.85	$29,578.15	
Democrat										
(51.7%)	YES	$5,000.00			$25,000.00		$30,000.00	$784.05	$29,215.95	
District 101										
Republican										
(38.1%)	YES	$5,000.00			$24,814.03	$185.97	$30,000.00	$2,253.92	$27,746.08	
Democrat										
(61.9%)	YES	$5,000.00	$9,183.63		$25,000.00	$816.37	$40,000.00	$80.26	$39,919.74	
*Democrat**	NO									$990.00

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APPENDIX F 2008 HOUSE CANDIDATE RECEIPTS & EXPENDITURES

District & Vote Percentage	CEP?	Qualifying Contributions	CEP Primary Grant	Trigger Funds	CEP General Election Grant	Personal Funds	TOTAL RECEIPTS	CEP Surplus Returned	EXPENDITURES	Additional Primary $$$[1]
District 102										
Republican										
(100%)	YES	$5,000.00			$7,500.00		$12,500.00	$2,217.52	$10,282.48	
Democrat	N/A						XXX			
District 103										
Republican										
(49.1%)	YES	$5,000.00			$25,000.00		$30,000.00	$245.48	$29,754.52	
Democrat										
(50.9%)	YES	$5,000.00			$25,000.00		$30,000.00	$380.72	$29,619.28	
District 104										
Republican	N/A						XXX			
Democrat										
(87%)	YES	$5,000.00			$15,000.00		$20,000.00	$10,487.47	$9,512.53	
Petitioning										
(13%)	NO						$3,997.00			
District 105										
Republican										
(42.5%)	YES	$5,000.00			$25,000.00		$30,000.00	$5,825.12	$24,174.88	
Democrat										
(57.5%)	YES	$5,000.00			$25,000.00		$30,000.00	$6,991.96	$23,008.04	

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APPENDIX F 2008 HOUSE CANDIDATE RECEIPTS & EXPENDITURES

District & Vote Percentage	CEP?	Qualifying Contributions	CEP Primary Grant	Trigger Funds	CEP General Election Grant	Personal Funds	TOTAL RECEIPTS	CEP Surplus Returned	EXPENDITURES	Additional Primary $$$[1]
District 106										
Republican										
(43.8%)	YES	$5,000.00			$24,958.00	$42.00	**$30,000.00**	$530.12	**$29,469.88**	
Democrat										
(56.2%)	YES	$5,000.00			$25,000.00		**$30,000.00**	$813.02	**$29,186.98**	
District 107										
Republican										
(65%)	YES	$5,000.00			$24,972.88	$27.12	**$30,000.00**	$0.00	**$30,000.00**	
Democrat										
(35%)	YES	$5,000.00			$25,000.00		**$30,000.00**	$5,218.73	**$24,781.27**	
District 108										
Republican										
(100%)	YES	$5,000.00			$24,002.32	$997.68	**$30,000.00**	$19,358.00	**$10,642.00**	
Democrat	N/A						**XXX**			
District 109										
Republican										
(34.4%)	YES	$5,000.00			$25,000.00		**$30,000.00**	$399.92	**$29,600.08**	
Democrat										
(65.6%)	YES	$5,000.00			$25,000.00		**$30,000.00**	$3,164.12	**$26,835.88**	

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APPENDIX F 2008 HOUSE CANDIDATE RECEIPTS & EXPENDITURES

District & Vote Percentage	CEP[2]	Qualifying Contributions	CEP Primary Grant	Trigger Funds	CEP General Election Grant	Personal Funds	TOTAL RECEIPTS	CEP Surplus Returned	EXPENDITURES	Additional Primary $$$[1]
District 110										
Republican										
(37.1%)	YES	$5,000.00			$24,899.68	$100.32	**$30,000.00**	$964.11	**$29,035.89**	
Democrat										
(62.6%)	YES	$5,000.00			$25,000.00		**$30,000.00**	$3,194.12	**$26,805.88**	
District 111										
Republican										
(60.6%)	YES	$5,000.00			$25,000.00		**$30,000.00**	$0.00	**$30,000.00**	
Democrat										
(39.4%)	YES	$5,000.00			$24,500.00	$500.00	**$30,000.00**	$803.39	**$29,196.61**	
District 112										
Republican										
(56.3%)	YES	$5,000.00			$25,000.00		**$30,000.00**	$5,401.77	**$24,598.23**	
Democrat										
(43.7%)	YES	$5,000.00			$25,000.00		**$30,000.00**	$10.60	**$29,989.40**	
District 113										
Republican										
(100%)	YES	$5,000.00			$7,500.00		**$12,500.00**	$903.65	**$11,596.35**	
Democrat	N/A						XXX			

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APPENDIX F 2008 HOUSE CANDIDATE RECEIPTS & EXPENDITURES

District & Vote Percentage	CEP?	Qualifying Contributions	CEP Primary Grant	Trigger Funds	CEP General Election Grant	Personal Funds	TOTAL RECEIPTS	CEP Surplus Returned	EXPENDITURES	Additional Primary $$$[1]
District 114										
Republican										
(55.3%)	YES	$5,000.00			$25,000.00		**$30,000.00**	$534.75	**$29,465.25**	
Democrat										
(44.7%)	YES	$5,000.00			$25,000.00		**$30,000.00**	$1,128.69	**$28,871.31**	
District 115										
Republican	N/A						**XXX**			
Democrat										
(100%)	NO						**$3,310.00**			
District 116										
Republican	N/A						**XXX**			
Democrat										
(100%)	NO						**$1,950.00**			
District 117										
Republican										
(44.4%)	YES	$5,000.00			$25,000.00		**$30,000.00**	$58.82	**$29,941.18**	
Democrat										
(55.6%)	YES	$5,000.00			$25,000.00		**$30,000.00**	$6,869.31	**$23,130.69**	

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APPENDIX F 2008 HOUSE CANDIDATE RECEIPTS & EXPENDITURES

District & Vote Percentage	CEP?	Qualifying Contributions	CEP Primary Grant	Trigger Funds	CEP General Election Grant	Personal Funds	TOTAL RECEIPTS	CEP Surplus Returned	EXPENDITURES	Additional Primary $$$[1]
District 118										
Republican (36.3%)	YES	$5,000.00			$25,000.00		**$30,000.00**	$5,632.02	**$24,367.98**	
Democrat (54.1%)	YES	$5,000.00			$25,000.00		**$30,000.00**	$11,316.79	**$18,683.21**	
Independent (9.6%)	YES	$5,000.00			$16,616.00	$51.00	**$21,667.00**	$1,063.21	**$20,603.79**	
District 119										
Republican (36.5%)	YES	$5,000.00			$25,000.00		**$30,000.00**	$37.84	**$29,962.16**	
Democrat (63.5%)	YES	$5,000.00			$24,900.00	$100.00	**$30,000.00**	$945.53	**$29,054.47**	
District 120										
Republican (55.3%)	YES	$5,000.00			$25,000.00		**$30,000.00**	$5,509.45	**$24,490.55**	
Democrat (44.7%)	YES	$5,000.00			$24,978.92	$21.08	**$30,000.00**	$229.91	**$29,770.09**	

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APPENDIX F 2008 HOUSE CANDIDATE RECEIPTS & EXPENDITURES

District & Vote Percentage	CEP?	Qualifying Contributions	CEP Primary Grant	Trigger Funds	CEP General Election Grant	Personal Funds	TOTAL RECEIPTS	CEP Surplus Returned	EXPENDITURES	Additional Primary $$$[1]
District 121										
Republican	N/A						**XXX**			
Democrat										
(100%)	YES	$5,000.00	$24,900.00		$1,807.18	$100.00	**$31,807.18**	$13,257.45	**$18,549.73**	
*Democrat**	NO									EXEMPT
District 122										
Republican										
(54.7%)	YES	$5,000.00			$25,000.00		**$30,000.00**	$4,284.54	**$25,715.46**	
Democrat										
(45.3%)	YES	$5,000.00			$25,000.00		**$30,000.00**	$3,763.65	**$26,236.35**	
District 123										
Republican										
(62.6%)	YES	$5,000.00			$25,000.00		**$30,000.00**	$2,733.52	**$27,266.48**	
Democrat										
(37.4%)	YES	$5,000.00			$25,000.00		**$30,000.00**	$187.44	**$29,812.56**	

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APPENDIX F 2008 HOUSE CANDIDATE RECEIPTS & EXPENDITURES

District & Vote Percentage	CEP?	Qualifying Contributions	CEP Primary Grant	Trigger Funds	CEP General Election Grant	Personal Funds	TOTAL RECEIPTS	CEP Surplus Returned	EXPENDITURES	Additional Primary $$$[1]
District 124										
Republican										
(10.5%)	NO						**EXEMPT**			
Democrat										
(89.5%)	YES	$5,000.00	$25,000.00		$24,111.81	$881.19	**$54,993.00**	$5,067.74	$49,925.26	
*Democrat**	NO									WITHDREW
District 125										
Republican										
(100%)	YES	$5,000.00			$6,500.00	$1,000.00	**$12,500.00**	$1,551.19	**$10,948.81**	
Democrat	N/A						**XXX**			
District 126										
Republican										
(9.8%)	NO						**EXEMPT**			
Democrat										
(90.2%)	YES	$5,000.00	$25,000.00		$25,000.00		**$55,000.00**	$6,142.05	**$48,857.95**	
*Democrat**	YES	$5,000.00	$25,000.00							$30,000.00
District 127										
Republican	N/A						**XXX**			
Democrat										
(100%)	YES	$5,000.00			$7,500.00		**$12,500.00**	$8,551.60	**$3,948.40**	

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APPENDIX F 2008 HOUSE CANDIDATE RECEIPTS & EXPENDITURES

District & Vote Percentage	CEP?	Qualifying Contributions	CEP Primary Grant	Trigger Funds	CEP General Election Grant	Personal Funds	TOTAL RECEIPTS	CEP Surplus Returned	EXPENDITURES	Additional Primary $$$[1]
District 128										
Republican (7.1%)	NO						**EXEMPT**			
Democrat (92.9%)	YES	$5,000.00	$25,000.00		$25,000.00		**$55,000.00**	$1,115.93	**$53,884.07**	
*Democrat**	YES	$5,000.00	$25,000.00							$30,000.00
District 129										
Republican (19.8%)	NO						**EXEMPT**			
Democrat (80.2%)	YES	$5,000.00	$24,395.63		$23,943.08	$604.37	**$53,943.08**	$8,565.55	**$45,377.53**	
*Democrat**	YES	$5,000.00	$25,000.00							$30,000.00
District 130										
Republican (9.4%)	NO						**$60.00**			
Democrat (88.8%)	YES	$5,000.00	$24,970.00		$25,000.00	$30.00	**$55,000.00**	$3,668.00	**$51,332.00**	
Petitioning (1.9%)	NO						**EXEMPT**			$30,000.00
*Democrat**	YES	$5,000.00	$25,000.00							$30,000.00
*Democrat**	YES	$5,000.00	$25,000.00							

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APPENDIX F 2008 HOUSE CANDIDATE RECEIPTS & EXPENDITURES

District & Vote Percentage	CEP?	Qualifying Contributions	CEP Primary Grant	Trigger Funds	CEP General Election Grant	Personal Funds	TOTAL RECEIPTS	CEP Surplus Returned	EXPENDITURES	Additional Primary $$$[1]
District 131										
Republican										
(100%)	NO						$5,395.00			
Democrat	N/A						XXX			
District 132										
Republican										
(45.1%)	YES	$5,000.00			$25,000.00		$30,000.00	$839.00	$29,161.00	
Democrat										
(54.9%)	YES	$5,000.00			$25,000.00		$30,000.00	$2,221.18	$27,778.82	
District 133										
Republican										
(38.1%)	NO						$6,454.00			
Democrat										
(61.9%)	YES	$5,000.00			$24,975.00	$25.00	$30,000.00	$8,675.46	$21,324.54	
District 134										
Republican										
(52.7%)	YES	$5,000.00			$25,000.00		$30,000.00	$1,080.07	$28,919.93	
Democrat										
(47.3%)	YES	$5,000.00			$25,000.00		$30,000.00	$287.11	$29,712.89	

* Denotes a primary candidate.

[1] "Additional Primary $$$" means campaign funding that is not reflected in the "Total Receipts" or "Total Expenditures" columns. In other words, it is the money spent by the losing primary candidate.

APPENDIX F 2008 HOUSE CANDIDATE RECEIPTS & EXPENDITURES

District & Vote Percentage	CEP*	Qualifying Contributions	CEP Primary Grant	Trigger Funds	CEP General Election Grant	Personal Funds	TOTAL RECEIPTS	CEP Surplus Returned	EXPENDITURES	Additional Primary $$$!
District 135										
Republican (82%)	YES	$5,000.00			$15,000.00		$20,000.00	$2,163.47	$17,836.53	
Democrat	N/A						XXX			
Green (18%)	NO						EXEMPT			
District 136										
Republican (34.6%)	YES	$5,000.00			$24,983.85	$16.15	$30,000.00	$16.18	$29,983.82	
Democrat (65.4%)	YES	$5,000.00			$24,711.60	$288.40	$30,000.00	$0.00	$30,000.00	
District 137										
Republican (28.4%)	YES	$5,000.00			$25,000.00		$30,000.00	$147.26	$29,852.74	
Democrat (71.6%)	YES	$5,000.00			$24,700.00	$300.00	$30,000.00	$467.16	$29,532.84	
District 138										
Republican (52.5%)	YES	$5,000.00			$25,000.00		$30,000.00	$2,719.42	$27,280.58	
Democrat (47.5%)	YES	$5,000.00			$25,000.00		$30,000.00	$1,607.31	$28,392.69	

* Denotes a primary candidate

! "Additional Primary $$$" means campaign funding that is not reflected in the "Total Receipts" or "Total Expenditures" columns. In other words, it is the money spent by the losing primary candidate.

APPENDIX F 2008 HOUSE CANDIDATE RECEIPTS & EXPENDITURES

District & Vote Percentage	CEP[2]	Qualifying Contributions	CEP Primary Grant	Trigger Funds	CEP General Election Grant	Personal Funds	TOTAL RECEIPTS	CEP Surplus Returned	EXPENDITURES	Additional Primary $$$[1]
District 139										
Republican	N/A						XXX			
Democrat										
(100%)	NO						$6,264.00			
District 140										
Republican	N/A						XXX			
Democrat										
(100%)	YES	$5,000.00			$7,500.00		$12,500.00	$1,579.89	$10,920.11	
District 141										
Republican										
(100%)	NO						$19,602.00			
Democrat	N/A						XXX			
District 142										
Republican										
(79.9%)	YES	$5,000.00			$15,000.00		$20,000.00	$8,551.15	$11,448.85	
Democrat	N/A						XXX			
Working Families										
(20.1%)	NO						EXEMPT			

* Denotes a primary candidate

[1] "Additional Primary $$$" means campaign funding that is not reflected in the "Total Receipts" or "Total Expenditures" columns. In other words, it is the money spent by the losing primary candidate.

APPENDIX F 2008 HOUSE CANDIDATE RECEIPTS & EXPENDITURES

District & Vote Percentage	CEP?	Qualifying Contributions	CEP Primary Grant	Trigger Funds	CEP General Election Grant	Personal Funds	TOTAL RECEIPTS	CEP Surplus Returned	EXPENDITURES	Additional Primary $$$
District 143										
Republican										
(46.8%)	YES	$5,000.00			$25,000.00		$30,000.00	$962.56	$29,037.44	
Democrat										
(53.2%)	YES	$5,000.00			$25,000.00		$30,000.00	$5,269.66	$24,730.34	
District 144										
Republican	N/A						XXX			
Democrat										
(100%)	NO						$9,086.00			
District 145										
Republican										
(16.9%)	YES	$5,000.00			$25,000.00		$30,000.00	$2,652.34	$27,347.66	
Democrat										
(83.1%)	YES	$5,000.00			$25,000.00		$30,000.00	$15,463.57	$14,536.43	
District 146										
Republican	N/A						XXX			
Democrat										
(100%)	NO						$7,750.00			

* Denotes a primary candidate

"Additional Primary $$$" means campaign funding that is not reflected in the "Total Receipts" or "Total Expenditures" columns. In other words, it is the money spent by the losing primary candidate.

APPENDIX F 2008 HOUSE CANDIDATE RECEIPTS & EXPENDITURES

District & Vote Percentage	CEP[2]	Qualifying Contributions	CEP Primary Grant	Trigger Funds	CEP General Election Grant	Personal Funds	TOTAL RECEIPTS	CEP Surplus Returned	EXPENDITURES	Additional Primary $$$
District 147										
Republican	N/A						XXX			
Democrat										
(100%)	NO						$8,109.00			
District 148										
Republican	N/A						XXX			
Democrat										
(100%)	NO						$5,694.00			
District 149										
Republican	NO						$9,057.00			
Democrat										
(100%)	N/A						XXX			
District 150										
Republican										
(100%)	NO						$7,680.00			
Democrat	N/A						XXX			

* Denotes a primary candidate

[1] "Additional Primary $$$" means campaign funding that is not reflected in the "Total Receipts" or "Total Expenditures" columns. In other words, it is the money spent by the losing primary candidate.

APPENDIX F 2008 HOUSE CANDIDATE RECEIPTS & EXPENDITURES

District & Vote Percentage	CEP?	Qualifying Contributions	CEP Primary Grant	Trigger Funds	CEP General Election Grant	Personal Funds	TOTAL RECEIPTS	CEP Surplus Returned	EXPENDITURES	Additional Primary $$$[1]
District 151										
Republican										
(55.4%)	YES	$5,000.00			$25,000.00		$30,000.00	$0.00	$30,000.00	
Democrat										
(44.6%)	YES	$5,000.00			$25,000.00		$30,000.00	$143.00	$29,857.00	
Average Receipts:							$24,338.06			
Median Receipts:							$30,000.00			
CEP-PARTICIPATING AVERAGE EXPENDITURES:									$25,712.14	
CEP-PARTICIPATING MEDIAN EXPENDITURES:									$28,171.11	

* Denotes a primary candidate.

[1] "Additional Primary $$$" means campaign funding that is not reflected in the "Total Receipts" or "Total Expenditures" columns. In other words, it is the money spent by the losing primary candidate.

APPENDIX G 2008 SENATE MINOR PARTY DISTRICTS

	CEP?	RECEIPTS	CEP-PARTICIPATING EXPENDITURES
District 1			
Republican	YES	$7,831.00	
Democrat	YES	$175,000.00	$159,938.75
Green	NO	$150.00	
District 15			
Republican	N/A	XXX	
Democrat	YES	$100,000.00	$95,425.09
Working Families	YES	$100,000.00	$91,842.13
District 16			
Republican	YES	$66,000.00	$60,520.69
Democrat	N/A	XXX	
Independent Party	NO	EXEMPT	
District 20			
Republican	YES	$100,000.00	$95,383.32
Democrat	YES	$100,000.00	$89,831.44
Libertarian	NO	EXEMPT	
District 24			
Republican	YES	$100,000.00	$99,894.04
Democrat	YES	$135,000.00	$134,768.44
Petitioning Candidate	NO	EXEMPT	
District 33			
Republican	YES	$100,000.00	$90,291.60
Democrat	YES	$100,000.00	$99,483.10
Green	NO	EXEMPT	
District 36			
Republican	NO	$93,433.00	N/A
Democrat	NO	$11,430.00	N/A
Green	NO	EXEMPT	
Average Receipts:		$84,917.43	
Median Receipts:		$100,000.00	
CEP-Participating Average Expenditures:			$101,737.86
CEP-Participating Median Expenditures:			$95,404.21

APPENDIX H 2008 HOUSE MINOR PARTY DISTRICTS

	CEP?	RECEIPTS	CEP-PARTICIPATING EXPENDITURES
District 1			
Republican	N/A	XXX	
Democrat	NO	EXEMPT	
CT for Lieberman	NO	EXEMPT	
District 4			
Republican	N/A	XXX	
Democrat	YES	$30,000.00	$19,160.05
CT for Lieberman	NO	EXEMPT	
District 5			
Republican	N/A	XXX	
Democrat	YES	$44,789.01	
Petitioning	NO	$3,785.00	
Petitioning	NO	$20.00	
District 16			
Republican	YES	$30,000.00	$30,000.00
Democrat	YES	$30,000.00	$29,311.00
Working Families	YES	$21,667.00	$18,454.89
Petitioning	NO	EXEMPT	
District 20			
Republican	NO	EXEMPT	
Democrat	YES	$30,000.00	$15,389.44
CT for Lieberman	NO	EXEMPT	
District 24			
Republican	YES	$30,000.00	$21,194.90
Democrat	YES	$30,000.00	$27,777.31
Concerned Citizens	NO	EXEMPT	
District 29			
Republican	N/A	XXX	
Democrat	YES	$20,000.00	$10,416.26
CT for Lieberman	NO	EXEMPT	

APPENDIX H 2008 HOUSE MINOR PARTY DISTRICTS

	CEP?	RECEIPTS	CEP-PARTICIPATING EXPENDITURES
District 39			
Republican	NO	**EXEMPT**	
Democrat	NO	**$2,706.00**	
Green	NO	**$368.00**	
District 49			
Republican	YES	**$30,000.00**	**$26,215.52**
Democrat	YES	**$54,211.25**	**$50,838.70**
Concerned Citizens	NO	**EXEMPT**	
District 52			
Republican	YES	**$30,000.00**	**$29,929.16**
Democrat	YES	**$30,000.00**	**$29,301.00**
Christian Center Party	NO	**EXEMPT**	
District 60			
Republican	YES	**$30,000.00**	**$26,977.02**
Democrat	YES	**$30,000.00**	**$14,216.62**
Petitioning	NO	**$5,097.00**	
District 66			
Republican	YES	**$30,000.00**	
Democrat	YES	**$30,000.00**	
Concerned Citizens	NO	**EXEMPT**	
District 70			
Republican	NO	**$10,015.00**	
Democrat	N/A	**XXX**	
Ind. Party Waterbury TC	NO	**EXEMPT**	
District 71			
Republican	YES	**$30,000.00**	**$28,510.64**
Democrat	YES	**$30,000.00**	**$28,668.11**
Independent	YES	**$30,000.00**	**$26,078.21**

APPENDIX H 2008 HOUSE MINOR PARTY DISTRICTS

	CEP?	RECEIPTS	CEP-PARTICIPATING EXPENDITURES
District 72			
Republican	N/A	XXX	
Democrat	YES	$20,000.00	$18,731.43
Ind. Party Waterbury TC	NO	EXEMPT	
District 73			
Republican	N/A	XXX	
Democrat	YES	$20,000.00	$19,631.85
Independent	NO	EXEMPT	
District 74			
Republican	YES	$39,300.00	$39,054.45
Democrat	N/A	XXX	
Independent	YES	$21,339.23	$21,335.75
District 75			
Republican	YES	$30,000.00	$29,588.95
Democrat	YES	$30,000.00	$28,596.79
Independent	NO	$2,021.00	
Concerned Citizens	NO	EXEMPT	
District 80			
Republican	N/A	XXX	
Democrat	YES	$30,000.00	
Concerned Citizens	NO	EXEMPT	
Petitioning	NO	EXEMPT	
District 81			
Republican	NO	$1,686.00	
Democrat	YES	$30,000.00	$9,099.05
Concerned Citizens	NO	EXEMPT	
District 88			
Republican	N/A	XXX	
Democrat	YES	$30,000.00	$21,090.13
Petitioning	YES	$30,000.00	$29,996.07

APPENDIX H 2008 HOUSE MINOR PARTY DISTRICTS

	CEP?	RECEIPTS	CEP-PARTICIPATING EXPENDITURES
District 90			
Republican	N/A	XXX	
Democrat	YES	$20,000.00	$16,666.54
CT for Lieberman	NO	EXEMPT	
District 91			
Republican	N/A	XXX	
Democrat	NO	$5,158.00	
Petitioning	NO	$2,927.00	
District 94			
Republican	N/A	XXX	
Democrat	YES	$30,000.00	
Petitioning	NO	$795.00	
District 104			
Republican	N/A	XXX	
Democrat	YES	$20,000.00	$9,512.53
Petitioning	NO	$3,997.00	
District 118			
Republican	YES	$30,000.00	$24,367.98
Democrat	YES	$30,000.00	$18,683.21
Independent	YES	$21,667.00	$20,603.79
District 130			
Republican	NO	$60.00	
Democrat	YES	$55,000.00	$51,332.00
Petitioning	NO	EXEMPT	
District 135			
Republican	YES	$20,000.00	
Democrat	N/A	XXX	$17,836.53
Green	NO	EXEMPT	
District 142			
Republican	YES	$20,000.00	$11,448.85
Democrat	N/A	XXX	
Working Families	NO	EXEMPT	

APPENDIX H 2008 HOUSE MINOR PARTY DISTRICTS

	CEP?	RECEIPTS	CEP-PARTICIPATING EXPENDITURES
Average Receipts:		**$22,819.39**	
Median Receipts:		**$30,000.00**	
CEP-Participating Average Expenditures:			$24,118.08
CEP-Participating Median Expenditures:			$22,851.87

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

GREEN PARTY OF CONNECTICUT, S. MICHAEL DEROSA, LIBERTARIAN PARTY OF CONNECTICUT, ELIZABETH GALLO, JOANNE P. PHILLIPS, AMERICAN CIVIL LIBERTIES UNION OF CONNECTICUT, ROGER C. VANN, ASSOCIATION OF CONNECTICUT LOBBYISTS, BARRY WILLIAMS, and ANN C. ROBINSON,
Plaintiffs,
v.

CIVIL ACTION No. 3:06cv1030 (SRU)

JEFFREY GARFIELD, in his official capacity as Executive Director and General Counsel of the State Elections Enforcement Commission; RICHARD BLUMENTHAL, in his official capacity as Attorney General of the State of Connecticut; PATRICIA HENDEL, ROBERT N. WORGAFTIK, JACLYN BERNSTEIN, REBECCA DOTY, ENID JOHNS ORESMAN, DENNIS RILEY, MICHAEL RION, SCOTT A. STORMS, SISTER SALLY J. TOLLES, in their official capacities as Officials and Members of the Office of State Ethics; and BENJAMIN BYCEL, in his official capacity as Executive Director of the Office of State Ethics,

Defendants,

AUDREY BLONDIN, COMMON CAUSE OF CONNECTICUT, CONNECTICUT CITIZENS ACTION GROUP, KIM HYNES, and TOM SEVIGNY,
Intervenor-Defendants.

RULING ON MOTION TO DISMISS and MOTION FOR JUDGMENT ON THE PLEADINGS

The Connecticut Legislature has enacted a campaign finance reform law that permits certain qualified candidates to receive public funds to conduct their campaigns. Plaintiffs filed a five-count amended complaint alleging that various of the law's provisions violate the United States Constitution.[1] Defendants now move to dismiss and for judgment on the pleadings, arguing that the plaintiffs lack standing to bring the challenges set forth in counts two and three, and that counts one, two, and three fail to state a claim upon which relief can be granted. For reasons that follow, defendants' motions are granted in part and denied in part.

I. Background

On June 21, 2004, then Connecticut Governor John G. Rowland resigned after he was accused of improperly accepting tens of thousands

[1] This case consists of two consolidated actions.

of dollars in gifts and services from state contractors in exchange for the award of state contracts. On December 7, 2005, Rowland pled guilty to charges related to the scandal. In response to those, and other recent events in the state's history, the Connecticut General Assembly passed a new campaign finance reform law, Public Act 05-5 (the "Act").

A. The Act

One of the Act's provisions created the Citizens' Election Program ("CEP"), a voluntary public financing option for candidates seeking certain elective offices. Before a candidate can receive public funds under the CEP, however, the candidate must meet several requirements, and the requirements depend upon the candidate's party affiliation. A "major party" is "(A) a party or organization whose candidate for Governor at the last-preceding election for Governor received, under the designation of that political party or organization, at least twenty per cent of the whole number of votes cast for all candidates for Governor, or (B) a political party having, at the last-preceding election for Governor, a number of enrolled members on the active registry list equal to at least twenty per cent of the total number of enrolled members of all political parties on the active registry list in the state." Conn. Gen. Stat. § 9-372(5).

To qualify for CEP funds, all candidates, regardless of party affiliation, must raise a certain number of qualifying contributions in

amounts of 100 dollars or less from individuals. Conn. Gen. Stat. §§ 9-102(b), 9-704. The total amount of qualifying contributions that a candidate must raise depends upon the office for which the candidate is running.[2] *Id.* For major party candidates, there are no additional requirements to receive full public funding.[3]

Minor and petitioning party candidates (collectively "minor party candidates"), however, must satisfy at least one of two additional requirements to qualify for public funding. First, a minor party candidate can qualify for public funding by gathering signatures of qualified voters ("petitioning requirements"). Conn. Gen. Stat. § 9-705(c)(2). If a candidate gathers signatures equal to 20 percent or more of the total number of votes cast in the previous election, the candidate is entitled to receive the full public grant for the general election. *Id.* If the candidate gathers signatures equal to 15 to 20 percent of the total vote in the previous election, the candidate is entitled to receive two-thirds of the full public

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[2] Gubernatorial candidates must raise 250,000 dollars in qualifying contributions; candidates for other state-wide offices such as Lieutenant Governor; Attorney General, State Comptroller, State Treasurer or Secretary of the State must raise 75,000 dollars; state senatorial candidates must raise 15,000 dollars; and state representative candidates must raise 5,000 dollars. *Id.* at § 9-704(a)(1)-(4). The Act also places other restrictions on qualifying contributions.

[3] Except in the exceedingly rare circumstances set forth below, minor party candidates are entitled to only a fraction of the full public funds, or no public funds at all.

grant for the general election. *Id.* If the candidate gathers signatures equal to 10 to 15 percent of the total vote in the previous election, the candidate is entitled to receive one-third of the full public grant for the general

election.[4] *Id.*

Second, a minor party candidate can qualify for public funding if the candidate, or another member of her party, received a certain percentage of the vote in the previous general election for the same office ("prior success formula"). If the candidate, or a member of her party, garners 20 percent of the vote in the preceding general election, she is entitled to receive the full public grant for the general election. Conn. Gen. Stat. §§ 9-705(c)(1), (g)(1). If the candidate, or a member of her party, garners 15 to 20 percent of the vote in the preceding general election, she is entitled to receive two-thirds of the full public grant for the general election. *Id.* If the candidate, or a member of her party, garners 10 to 15 percent of the vote in the preceding general election, she is entitled to receive one-third of the full public grant for the general election. *Id.* Because it is necessary to show support in a preceding election, this provision, as a practical matter, does not apply to a minor party candidate whose party has not run

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[4] Plaintiffs allege that fulfilling the signature requirement is either impossible, or at very least, impractical. Because the motion to-dismiss standard applies, I must assume the truth of that factual allegation.

a relatively successful campaign in the preceding year for the same office. Again, the additional qualifying criteria apply only to minor party candidates; they do not apply to major party candidates. Plaintiffs have alleged that these additional requirements are, as a practical matter, impossible for most, if not all, minor party candidates to satisfy.

Minor party candidates, in certain elections, also may be entitled to post-election reimbursements if they achieve a certain level of support. Specifically, minor party candidates running for "Governor, Lieutenant Governor, Attorney General, State Comptroller, Secretary of the State or State Treasurer shall be eligible to receive a supplemental grant from the fund after the general election if . . . such candidate received a greater per cent of the whole number of votes cast for all candidates for said office at said election than the per cent of votes utilized by such candidate to obtain a general election campaign grant. . . ." Conn. Gen. Stat. § 9-705(c)(3).

The level of funding under the CEP depends upon the office sought, as well as party status: qualifying gubernatorial candidates receive 1.25 million dollars for the major party primary and 3 million dollars for the general election, Conn. Gen. Stat. § 705(a); qualifying candidates for lieutenant governor, attorney general, state comptroller, secretary of the state, and state treasurer receive 375,000 dollars for the major party primary and 750,000 dollars for the general election, Conn. Gen. Stat. § 9-705(b);

qualifying candidates for state senate receive either 35,000 dollars or 75,000 dollars for the major party primary,[5] and 85,000 dollars for the general election, Conn. Gen. Stat. § 9-705(e); and qualifying candidates for state representative receive either 10,000 dollars or 25,000 dollars for the major party primary,[6] and 25,000 dollars for the general election, Conn. Gen. Stat. § 9-705(f). Fully qualified minor party candidates receive the same funds for the general election, but receive no funding for primaries. Minor party candidates who qualify and receive partial grants for the general election, however, may raise and spend additional private funds in order to make up the difference between the partial grant and a full grant. Conn. Gen. Stat. § 9-702(c).

Candidates who accept public funding may not accept any private contributions, other than the initial qualifying contributions, and, with a

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[5] Major party candidates receive 35,000 dollars for the party primary unless "the percentage of the electors in the district served by said office who are enrolled in said major party exceeds the percentage of the electors in said district who are enrolled in another major party by at least twenty percentage points," in which case the candidate receives 75,000 dollars. Conn. Gen. Stat. § 9-705(e)(1)(A).

[6] Major party candidates receive 10,000 dollars for the party primary unless "the percentage of the electors in the district served by said office who are enrolled in said major party exceeds the percentage of the electors in said district who are enrolled in another major party by at least twenty percentage points," in which case the candidate receives 25,000 dollars. Conn. Gen. Stat. § 9-705(f)(1)(A).

few exceptions, generally may not spend money in excess of the original full public grant. Conn. Gen. Stat. § 9-702.

The CEP also contains provisions that provide for the release of additional public funds, in addition to the original full public grant, if the participating candidate is outspent by a nonparticipating candidate or by any other non-candidate or organization (collectively "triggering provisions"). One triggering provision is tied to expenditures made by an opposing candidate who does not accept public funding and is not bound by any expenditure limits. If a nonparticipating candidate spends more than the amount of the full public grant, then the participating candidate is entitled to receive up to four additional grants in excess of the full public grant, each worth 25 percent of the original grant. Conn. Gen. Stat. §§ 9-713(a)-(d) ("nonparticipating candidate trigger"). The participating candidate may not immediately spend any given 25 percent grant – instead, the grant is initially held in escrow and the candidate may only match her opponent's excess spending dollar for dollar. *Id.* The excess matching grants that participating candidates are entitled to receive through the non-participating candidate trigger, however, are capped at 100 percent of the original full public grant. Conn. Gen. Stat. § 9-713(g).

The CEP also contains a triggering provision tied to independent expenditures made by non-candidates ("independent expenditure trigger"). An independent expenditure is "an

expenditure that is made without the consent, knowing participation, or consultation of, a candidate or agent of the candidate committee and is not a coordinated expenditure," Conn. Gen. Stat. § 9-601(18), that is made "with the intent to promote the defeat of a participating candidate. . . ." Conn. Gen. Stat. § 9-714(a). Matching funds are triggered when a non-candidate makes an independent expenditure in support of an opposing candidate that, when combined with the opposing candidate's other expenditures, exceeds the participating candidate's full public grant. Conn. Gen. Stat. §§ 9-714(a)-(c). Again, the additional grant may not exceed 100 percent of the original full public grant. Conn. Gen. Stat. § 9-714(c).

B. Claims Relevant to the Instant Motion

Plaintiffs in this case, several minor political parties, several political organizations, and several past and potential-future candidates for various state political offices, bring a facial constitutional challenge to the Act. They filed a five-count amended complaint against several Connecticut officials[7] in which they seek to enjoin the officials from enforcing various of the Act's provisions.[8]

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[7] Several parties also moved to intervene as defendants. I granted their motion. *Ass'n of Conn. Lobbyists LLC v. Garfield*, 241 F.R.D. 100 (D. Conn. 2007).

[8] In addition to the instant challenge, the Securities Industry and Financial Markets Association ("SIFMA") challenged a provision of the law that required the State

In count one, plaintiffs allege that the Act's qualifying criteria and distribution formulas violate the First and Fourteenth Amendments to the United States Constitution because the CEP disproportionately burdens the political opportunity of minor party candidates. Am. Compl. at ¶ 53. In count two, plaintiffs allege that the non-participating candidate trigger, Conn. Gen. Stat. §§ 9-713(a)-(d), violates non-participating candidates' First Amendment rights. Am. Compl. at ¶ 54. Similarly, in count three, plaintiffs allege that the independent expenditure trigger, Conn. Gen. Stat. § 9-714, violates the potential independent expenders' First Amendment rights. Am. Compl. at ¶ 55.

Defendants now move to dismiss counts two and three for lack of standing. Defendants also move to dismiss counts one, two and three for failure to state a claim, and, in the alternative, seek judgment on the pleadings.

II. Standard of Review

Defendants move to dismiss counts two and three for lack of subject matter jurisdiction pursuant to Rule 12(b)(1) of the Federal Rules of Civil Procedure. The party who seeks to exercise the jurisdiction of the court bears the burden of establishing the court's jurisdiction. *Thompson v.*

Elections Enforcement Commission to publish the names of all state contractors, their principals, and the principals' household family members on the state's internet website. *SIFMA v. Garfield*, 469 F. Supp. 2d 25 (D. Conn. 2007).

County of Franklin, 15 F.3d 245, 249 (2d Cir. 1994). To survive a Rule 12(b)(1) motion, a plaintiff must clearly allege facts demonstrating that the plaintiff is a proper party to invoke judicial resolution of the dispute. *Id.* Although the plaintiff bears the ultimate burden of establishing jurisdiction by a preponderance of the evidence, "until discovery takes place, a plaintiff is required only to make a prima facie showing by pleadings and affidavits that jurisdiction exists." *Koehler v. Bank of Bermuda*, 101 F.3d 863, 865 (2d Cir. 1996). "When considering a party's standing, we 'accept as true all material allegations of the complaint, and must construe the complaint in favor of the complaining party.'" *Thompson*, 15 F.3d at 249 (quoting *Warth v. Seldin*, 422 U.S. 490, 501 (1975)). If a plaintiff has failed to allege facts supportive of standing, it is within the court's discretion to allow or to require the plaintiff to supply, by amendment to the complaint or by affidavits, further particularized allegations of fact deemed supportive of standing. *Id.*

Defendants also move to dismiss, and for judgment on the pleadings, with respect to counts one, two, and three pursuant to Rules 12(b)(6) and 12(c). "[A] motion to dismiss for failure to state a claim . . . that is styled as arising under Rule 12(b) but is filed after the close of pleadings, should be construed by the district court as a motion for judgment on the pleadings under Rule 12(c). This makes eminently good sense because a motion for judgment on the pleadings is the direct descendant of that ancient leper of the common

law, the 'speaking demurrer.'" *Patel v. Contemporary Classics of Beverly Hills*, 259 F.3d 123, 126 (2d Cir. 2001). I need not parse out the relatively complex filing history of this consolidated case to determine whether the instant motions, or particular portions of the motions, should be treated as motions to dismiss or motions for judgment on the pleadings because the standard of review here, as well as the analysis of the issues, are the same. *See id.* Thus, as a practical matter, I treat the two motions as one.

"The standard for granting a Rule 12(c) motion for judgment on the pleadings is identical to that of a Rule 12(b)(6) motion for failure to state a claim." *Id.* Pursuant to that standard, the defendants' motions will be granted only if "it is clear that no relief could be granted under any set of facts that could be proved consistent with the allegations." *Hishon v. Spalding*, 467 U.S. 69, 73 (1984). When deciding a motion to dismiss pursuant to Rule 12(b)(6), the court must accept the material facts alleged in the complaint as true, draw all reasonable inferences in favor of the plaintiffs, and decide whether the plaintiffs have pled a plausible claim for relief. *Bell Atl. Corp. v. Twombly*, 127 S. Ct. 1955, 1969 (2007); *Iqbal v. Hasty*, 490 F.3d 143, 157-58 (2d Cir. 2007). Courts may also consider any documents attached as exhibits or incorporated by reference in the pleadings, and any other matters of which judicial notice may be taken. *Samuels v. Air Transp. Local 504*, 992 F.2d 12, 15 (2d Cir. 1993). In addition, courts may "look to public records . . .

in deciding a motion to dismiss." *Blue Tree Hotels Investment (Canada), Ltd. v. Starwood Hotels & Resorts Worldwide, Inc.*, 369 F.3d 212, 217 (2d Cir. 2004).

III. Standing

To satisfy Article III standing, a plaintiff must first establish that she has suffered an injury in fact that is both "concrete and particularized," and "actual or imminent, not 'conjectural' or 'hypothetical.'" *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560 (1992). Second, a plaintiff must demonstrate a causal connection between the injury and the conduct of which she complains, specifically, that the injury is "fairly . . . trace[able] to the challenged action of the defendant, and not . . . the result [of] the independent action of some third party not before the court." *Simon v. Eastern Ky. Welfare Rights Org.*, 426 U.S. 26, 41-42 (1976). Finally, the injury must be redressable by a favorable decision. *Lujan*, 504 U.S. at 561.

In addition, the injury-in-fact requirement "serves to distinguish a person with a direct stake in the outcome of a litigation – even though small – from a person with a mere interest in the problem." *United States v. Students Challenging*

Regulatory Agency Procedures, 412 U.S. 669, 690 (1973). Finally, where "plaintiffs allege an intention to engage in a course of conduct arguably affected with a constitutional interest which is clearly proscribed by statute, courts have found standing to challenge the statute, even absent a specific threat of enforcement." *United Food & Commercial Workers Int'l Union v. IBP, Inc.*, 857 F.2d 422, 428 (8th Cir. 1988).

The crux of defendants' standing argument is that the plaintiffs have failed to plead a sufficient basis to establish that they will be injured by several of the CEP's challenged provisions.

A. Do Plaintiffs Have Standing to Challenge the Qualifying Criteria for Petitioning Candidates?

Defendants argue that plaintiffs lack standing to challenge the qualifying criteria for petitioning party candidates because the plaintiffs have not specifically alleged that any of them will be a petitioning party candidate in the future, and thus, none of the plaintiffs will suffer an injury from that provision. Defendants' argument, however, misses the mark.

The CEP imposes two additional obstacles for *all* minor party candidates to obtain public funds: the prior success formula and the petitioning requirements. The prior success formula, by definition, is inapplicable to candidates who either (a) have not previously run for the specific office sought, or (b) whose party

did not run for the specific office sought in the last election cycle. Thus, in many cases, satisfying the petitioning requirements is the only possible method to obtain public funding for a minor party candidate.

In this case, at least one of the plaintiffs is a potential petitioning candidate. Plaintiff S. Michael DeRosa is a member of the Green Party, a minor political party. Am. Compl. at ¶ 11. He ran for Secretary of the State in the past election and received less than two percent of the total vote. *Id.*; Office of the Secretary of the State, Vote for the Secretary of the State (2006), *available at* http://www.sots.ct.gov/RegisterManual/SectionVIII/SOV06Secretary.htm. DeRosa intends to run for a state political office in the future, and although he does not allege the specific office he will seek, he does allege that he will not qualify for public funding under the CEP. Am. Compl. at ¶ 11. Taking that allegation as true, and because DeRosa will not qualify for public funding under the prior success formula, DeRosa will have to satisfy the petitioning requirements to receive public funds. DeRosa's current inability to qualify for public funds thus derives as much, or greater, from his inability to satisfy the petitioning requirements as from the prior success formula.

Moreover, the fact that DeRosa has not alleged an intention to run as a petitioning party candidate may simply be a function of the fact that, as he alleges, the petitioning requirements, which require a petitioning candidate to gather signatures in the amount of 20 percent of the

total votes cast for that office in the preceding year, Conn. Gen. Stat. §§ 9-705(c)(2), (g)(2), are impracticable or impossible to meet. Still, the fact that DeRosa is not a declared petitioning party candidate does not render the petitioning requirements any less an obstacle to his receipt of public funds. Thus, assuming the allegations of the Amended Complaint to be true, DeRosa will be imminently harmed by the petitioning requirements.

B. Do Plaintiffs Have Standing to Challenge the Public Funding of Major Party Candidates in Primary Elections?

Defendants argue that plaintiffs have no standing to challenge the public funding of major party primaries because minor parties do not have primaries, and thus, minor party candidates suffer no harm from their exclusion from primary funding. Plaintiffs counter that they do suffer harm. Plaintiffs allege that, during primary elections, major party candidates gain exposure to the electorate and garner name recognition that helps the major party candidate in the general election. By funding major party candidates in primary races at an excessively high level, the law is alleged to exacerbate major party candidates' communications advantage.

Defendants may argue that funding major party candidates in their primary campaigns does

not give them an advantage in the general election, and thus does not harm minor party candidates, but that goes to the ultimate issue on the merits, not to standing. There is no question that the plaintiffs have alleged a stake in the outcome of the public funding of their general election opponents during their primary campaigns.

C. Do Plaintiffs Have Standing to Challenge the Independent Expenditure Trigger?

Defendants argue that plaintiffs have no standing to challenge the independent expenditure trigger because plaintiffs fail to allege they plan to make any independent expenditures in the future. The mere fact that a potential donor has not made, and would not make under the current law, a donation sufficient to trigger additional public campaign funds does not necessarily divest plaintiffs of standing, however, because the very fact that the trigger would prevent a potential expender from expending in the first instance constitutes the injury that gives rise to standing. In that respect, the triggering provision is alleged to be somewhat akin to the proverbial sword of Damocles; its impact is felt even when it merely hangs, it need not fall. Again, the defendants' argument that the

triggering provision does not chill speech goes to the merits, not to standing.[9]

IV. Count One – Do the CEP's Qualifying Criteria and Distribution Formulas Violate The First and Fourteenth Amendments?[10]

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[9] As set forth in greater detail below, plaintiffs' First Amendment claims in counts two and three that relate to the triggering provisions are without merit. The triggers are nevertheless applicable to plaintiffs' other First and Fourteenth Amendment claims, namely, that the CEP crowds them out of races, especially in one-party-dominant districts, and that the CEP is effectively a subsidy to major party candidates, not a substitute for private campaign contributions. Plaintiffs have standing to raise those First and Fourteenth Amendment claims.

[10] I understand plaintiffs' First Amendment challenge not to stand on its own, but to be part and parcel of their equal protection claim. Specifically, the First Amendment is relevant to determining whether the CEP burdens the exercise of plaintiffs' fundamental constitutional rights. *See Libertarian Party of Indiana v. Packard*, 741 F.2d 981, 984 n.2 (7th Cir. 1984) (discussing the interplay between the First and Fourteenth Amendments with respect to a similar claim); *see also Buckley v. Valeo*, 424 U.S. 1, 92-93 (1976) (initially rejecting plaintiff's First Amendment claim somewhat summarily before addressing plaintiffs' Equal Protection claim).

The Fourteenth Amendment to the United States Constitution prohibits States from depriving "any person of life, liberty, or property, without due process of law," or denying "any person within its jurisdiction the equal protection of the laws." U.S. Const. Amend. XIV. Courts perform similar analyses to evaluate claims pursuant to the Due Process and Equal Protection Clauses of the Fourteenth Amendment.[11] Under both clauses, a court must first determine the appropriate level of scrutiny to apply when evaluating the challenge to the law. A court must then apply the appropriate level of scrutiny to determine whether the law is appropriately tailored to meet its ends.

A broad overview of defendants' argument for dismissal of count one, and plaintiffs' responses to that argument, is useful before analyzing the nuances of the relevant issues in great detail. Defendants argue that this case falls

[11] Indeed, the two constitutional theories often overlap. *See Harrah Independent School Dist. v. Martin*, 440 U.S. 194, 197 (1979) (holding that the Supreme Court's "decisions construing the Equal Protection and Due Process Clauses of the Fourteenth Amendment do not form a checkerboard of bright lines between black squares and red squares"); *see also M.L.B. v. S.L.J.*, 519 U.S. 102, 120 (1996) (holding that the Supreme Court's decisions regarding "access to judicial processes . . . reflect both equal protection and due process concerns" and that "A 'precise rationale' has not been composed" for analyzing those cases "because cases of this order cannot be resolved by resort to easy slogans or pigeonhole analysis") (internal citations and quotations omitted).

within the rubric of *Buckley* 424 U.S. 1 (1976), a case that upheld the constitutionality of the presidential public funding program set forth in Subtitle H of the Internal Revenue Code. Plaintiffs argue that *Buckley* does not control here because the facts of this case are distinguishable from those presented in *Buckley*, and because the differences between the CEP and Subtitle H render the CEP unconstitutional under the Fourteenth Amendment.

A. Scrutiny

Plaintiffs allege in Count One that the CEP violates the First Amendment and the Equal Protection clause of the Fourteenth Amendment. Under "traditional equal protection principles," courts apply rational basis review to evaluate the constitutionality of a challenged statute, holding the law constitutional if it is rationally related to a legitimate state interest. *See Clements v. Fashing*, 457 U.S. 957, 962-63 (1982) ("The Equal Protection Clause allows the States considerable leeway to enact legislation that may appear to affect similarly situated people differently. Legislatures are ordinarily assumed to have acted constitutionally. Under traditional equal protection principles, distinctions need only be drawn in such a manner as to bear some rational relationship to a legitimate state end. Classifications are set aside only if they are based solely on reasons totally unrelated to the pursuit of the State's goals and only if no grounds can be conceived to justify them.").

Courts deviate from traditional equal protection principles, however, if the challenged statute discriminates against a suspect class of persons or burdens the exercise of a fundamental constitutional right in a discriminatory manner. *Id.* In this case, plaintiffs allege the latter. If a law burdens the exercise of a fundamental constitutional right in a discriminatory manner, it is subject to strict scrutiny, and will be held constitutional only if the law is narrowly tailored to achieve a compelling government interest. *See, e.g., Police Dep't of Chicago v. Mosley*, 408 U.S. 92, 101 (1972) (applying strict scrutiny to strike down an ordinance that placed content-based restriction upon certain types of picketing, holding that the "Equal Protection Clause requires that statutes affecting First Amendment interests be narrowly tailored to their legitimate objectives"); *Skinner v. Oklahoma*, 316 U.S. 535, 541 (1942) (applying strict scrutiny to strike down an Oklahoma law that permitted the state to forcibly sterilize "habitual criminals," holding that "strict scrutiny of the classification which a State makes in a sterilization law is essential, lest unwittingly, or otherwise, invidious discriminations are made against groups or types of individuals in violation of the constitutional guaranty of just and equal laws. The guaranty of equal protection of the laws is a pledge of the protection of equal laws.") (internal quotations omitted).

1. *Framing the Right at Issue*

Central to this case is the question whether the CEP burdens minor party candidates' exercise of a fundamental right. It is axiomatic that, before determining whether a right is fundamental, a court must frame and define the right at issue. Plaintiffs allege that the CEP burdens the exercise of their First Amendment rights.

In framing the particular First Amendment right at issue here, I do not write on a blank slate. Although a handful of other states have passed comprehensive public funding laws, *e.g.*, Ariz. Rev. Stat. §§ 16-940, *et seq.*; Minn. Stat. §§ 10A.01, *et seq.*; Ky. Rev. Stat. §§ 121A.005, *et seq.* (repealed); Me. Rev. Stat. tit. 21-A §§ 1121, *et seq.*; Mass. Gen. Laws ch. 55A, §§ 1, *et seq.* (repealed); N.C. Gen. Stat. Ann. §§163-278.61, *et seq.*; Vt. Stat. Ann. tit. 17 §§ 2801, *et seq.*, none of those laws is analogous to the CEP for reasons set forth below in greater detail. Thus, although most of those laws have been challenged, none of those cases provide much guidance.[12]

Instead, guidance in this case comes, almost exclusively, from Part III of the Supreme Court's opinion in *Buckley*, 424 U.S. 1.[13] In that case, plaintiffs brought a similar challenge to

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[12] As described in more detail in the tailoring section, those laws do provide a useful contrast to the CEP.

[13] The Supreme Court recently noted that "[o]ver the last 30 years, in considering the constitutionality of a host of different campaign finance statutes, this Court has repeatedly adhered to *Buckley*'s constraints." *Randall v. Sorrell*, 126 S. Ct. 2479, 2488 (2006).

Subtitle H, 26 U.S.C. §§ 9001, *et seq.* ("Subtitle H"), a provision of the Internal Revenue Code that created a public funding system for presidential elections.[14] Because of some rough similarities between the CEP and Subtitle H, discussions of Subtitle H and *Buckley* provide a useful starting point to analysis of the Act.

a. Subtitle H

Section 9006 of Subtitle H established a Presidential Election Campaign Fund, from which qualified candidates can receive public funding for presidential campaigns. The fund is financed under Section 6096(a), which authorizes individuals to earmark a small portion of their income tax payments, one dollar originally, to the fund. Subtitle H created three accounts, one each for (1) presidential nominating conventions, 26 U.S.C. § 9008, (2) general election campaigns, 26 U.S.C. § 9006, and (3) primary campaigns 26 U.S.C. § 9037.

Subtitle H makes distinctions among major, minor, and new parties. A "major party" is "a political party whose candidate for the office of President in the preceding presidential election

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[14] Plaintiffs in *Buckley* also challenged the public funding provision set forth in Subtitle H on at least two other grounds: (1) that it violated U.S. Const. Art. I, § 8 because it was "contrary to the 'general welfare;'" and (2) that "any scheme of public financing of election campaigns is inconsistent with the First Amendment." *Buckley*, 424 U.S. at 90.

received, as the candidate of such party, 25 percent or more of the total number of popular votes received by all candidates for such office." 26 U.S.C. § 9002(6). A "minor party" is "a political party whose candidate for the office of President in the preceding presidential election received, as the candidate of such party, 5 percent or more but less than 25 percent of the total number of popular votes received by all candidates for such office." 26 U.S.C. § 9002(7). A "new party" is "a political party which is neither a major party nor a minor party." 26 U.S.C. § 9002(8).

The disbursement of funds under Subtitle H depends upon party status. National committees of major parties are entitled to receive four million dollars for their nominating conventions, but the national committee may not use that money to benefit a particular candidate. 26 U.S.C. § 9008. A minor party receives a fraction of the four million dollars equal to the ratio of "the number of popular votes received by the candidate for President of the minor party . . . in the preceding presidential election," and "the average number of popular votes received by the candidates for President of the United States of the major parties in the preceding presidential election." 26 U.S.C. § 9008(b)(2). Major party candidates are entitled to receive 20 million dollars, adjusted for inflation, for the general election, 26 U.S.C. § 9004(a)(1); 2 U.S.C. § 441a(b)(1), provided the candidate agrees not to incur expenses in excess of the entitlement and does not accept private contributions "except to the extent necessary to make up any deficiency in

payments received out of the fund on account of the application of section 9006(d)." 26 U.S.C. § 9003(b). Minor party candidates are entitled to receive a fraction of the 20 million dollars equal to the ratio of "the number of popular votes received by the candidate for President of the minor party . . . in the preceding presidential election," and "the average number of popular votes received by the candidates for President of the United States of the major parties in the preceding presidential election." 26 U.S.C. § 9004(a)(2)(A). To receive funds, minor party candidates must agree that they will not incur expenses "in excess of the aggregate payments to which the eligible candidates of a major party are entitled," and that they will accept private contributions only to the extent necessary to make up the difference between the fraction of full public grant they receive and the total amount of the full public grant that major parties are entitled to receive. 26 U.S.C. § 9003(c).

If they do not qualify for public funding prior to an election, Subtitle H affords new party and minor party candidates an opportunity to obtain post-election funding to reimburse expenses under certain circumstances. New party and minor party candidates who receive "5 percent or more of the total number of popular votes cast for the office of President in such election shall be entitled to payments under section 9006 equal in the aggregate to an amount which bears the same ratio to the amount allowed . . . for a major party as the number of popular votes received by such candidate in such election

bears to the average number of popular votes received in such election by the candidates for President of the major parties." 26 U.S.C. § 9003(a)(3).

Finally, Subtitle H provides funding to use in presidential primary campaigns. 26 U.S.C. §§ 9031, *et seq.* To be eligible for primary funds, a participating candidate must raise at least 5,000 dollars in each of 20 states in increments of 250 dollars or less per person, and must agree to abide by expenditure limitations. Once eligible to receive funds, the participating candidate receives matching contributions up to 50 percent of the total expenditure limitation. 26 U.S.C. § 9034(b).

b. The First Amendment Right at Issue in *Buckley*

The *Buckley* Court, in Part III of the majority opinion, upheld the constitutionality of Subtitle H. In identifying the fundamental right at issue in *Buckley*, the Court began its discussion by noting that "[i]n several situations concerning the electoral process, the principle has been developed that restrictions on access to the electoral process must survive exacting scrutiny." *Buckley*, 424 U.S. at 93-94. The Court stated that ballot-access restrictions can be sustained only if they further "a vital governmental interest that is achieved by a means that does not unfairly or unnecessarily burden either a minority party's or an individual candidate's equally important interest in the continued availability of political opportunity." *Id.* at 94 (internal quotations and citation omitted).

The Court, however, distinguished ballot-access restrictions from public funding programs. It noted that ballot-access restrictions were "direct burdens not only on the candidate's ability to run for office but also on the voter's ability to voice preferences regarding representative government and contemporary issues," whereas "the denial of public financing to some Presidential candidates is not restrictive of voters' rights and less restrictive of candidates'." *Id.* The Court reasoned that "Subtitle H does not prevent any candidate from getting on the ballot or any voter from casting a vote for the candidate of his choice; the inability, if any, of minor-party candidates to wage effective campaigns will derive not from lack of public funding but from their inability to raise private contributions." *Id.* at 94-95. As such, "[a]ny disadvantage suffered by operation of the eligibility formulae under Subtitle H is thus limited to the claimed denial of the enhancement of opportunity to communicate with the electorate that the formulae afford eligible candidates." *Id.* at 95.

In addition, Subtitle H is less restrictive than ballot-access measures because eligible candidates must accept an expenditure ceiling. The *Buckley* Court concluded that, although public financing is less restrictive of access to the electoral process than are ballot-access regulations, Congress nevertheless "enacted Subtitle H in furtherance of sufficiently important governmental interests and has not unfairly or unnecessarily burdened the political opportunity of any party or candidate." *Id.* at 95. The Supreme

Court thus identified the First Amendment right at issue as "political opportunity."

Unfortunately, the Supreme Court did not go far in defining the concept of "political opportunity," nor did it set forth, in meaningful detail, the nature and scope of that right. Instead, the Court focused the bulk of its analysis on explaining how and why Subtitle H did not impinge on the right to political opportunity.

One aspect of the decision, however, bears particular mention. Justice White, who joined Part III of the Court's opinion in *Buckley*, noted that, "money is not always equivalent to or used for speech, even in the context of political campaigns." *Id.* at 263. Although money is not speech *per se*, money facilitates a candidate's ability to communicate with the electorate. *See id.* ("I accept the reality that communicating with potential voters is the heart of an election campaign and that widespread communication has become very expensive."). Justice White also noted that campaigns have other substantial expenses that "are not themselves communicative or remotely related to speech," and that some campaigns that operate on lower budgets engage in significantly more traditional speech than some campaigns that operate on higher budgets. *Id.* Still, there can be no doubt that increasing a candidate's available funds enhances that candidate's ability to convey her message to the general voting public.

2. *Does the CEP Burden the Political Opportunity of Minor Party Candidates?*

a. Part III of the Majority Opinion in *Buckley*

I again begin my analysis with *Buckley*. The Court first articulated the general principle that "the Constitution does not require Congress to treat all declared candidates the same for public financing purposes," essentially because different political parties have different "needs and potential." *Id.* at 97. The Court continued that "[s]ometimes the grossest discrimination can lie in treating things that are different as though they were exactly alike," *id.* at 97-98, and "since the presidential elections of 1856 and 1860, when the Whigs were replaced as a major party by the Republicans, no third party has posed a credible threat to the two major parties in presidential elections." *Id.* at 97-98. Because third parties have been traditionally unable to raise sufficient money to run effective presidential campaigns, Congress understandably provided major parties with full funding and minor parties with only a fraction of the full public grant. *Id.* at 98. "Identical treatment of all parties . . . would not only make it easy to raid the United States Treasury, it would also artificially foster the proliferation of splinter parties." *Id.* (internal quotation omitted).

The *Buckley* Court then reasoned that Subtitle H does not "disadvantage nonmajor parties by operating to reduce their strength

below that attained without any public financing." *Id.* at 99. Minor party candidates are still "free to raise money from private sources." *Id.* In addition, participating candidates must comply with expenditure ceilings, whereas non-participating candidates are free to raise and spend unlimited sums of money. *Id.* Most significantly, the Court held that "*[p]ublic funding for candidates of major parties is intended as a substitute for private contributions*; but for minor-party candidates such assistance may be viewed as a supplement to private contributions since these candidates may continue to solicit private funds up to the applicable spending limit." *Id.* (emphasis added).

The *Buckley* plaintiffs had also argued, "relying on the ballot-access decisions of this Court, that the absence of any alternative means of obtaining pre-election funding renders the scheme unjustifiably restrictive of minority political interests." *Id.* at 100. The Court disagreed because the "need for an alternative means turn[s] on the nature and extent of the burden imposed." *Id.* Alternative means were held unnecessary in *Buckley* because Subtitle H did not impose an unfair or unnecessary burden on minor party candidates. *Id.* at 101. The Court also noted that "[t]he primary goal of all candidates is to carry on a successful campaign by communicating to the voters persuasive reasons for electing them." *Id.* Ballot-access is more important to running a successful campaign than public financing because ballot-access is, with rare exceptions, essential to a successful

campaign, whereas "campaigns can be successfully carried out by means other than public financing. . . . [A]fter all, the important achievements of minority political groups in furthering the development of American democracy were accomplished without the help of public funds." *Id.* at 101-02.

Finally, the *Buckley* plaintiffs challenged the five percent vote threshold that minor party candidates must meet to receive public funds. Plaintiffs argued that the threshold was too high because it far exceeded previously-challenged ballot-access thresholds. The Court rejected that argument, again reasoning that a denial of public funds is less burdensome than a denial of access to a position on a ballot. *Id.* at 103. In addition, Subtitle H's five percent threshold was actually easier to meet than the five percent ballot-access threshold upheld in *Jenness v. Fortson*, 403 U.S. 431 (1971), because the ballot-access restriction in that case required a potential candidate to acquire five percent of all eligible voters, but Subtitle H only required candidates to obtain five percent of the actual vote. *Id.* Significantly, the Court held that "the choice of the percentage requirement that best accommodates the competing interests involved was for Congress to make. Without any doubt a range of formulations would sufficiently protect the public fisc and not foster factionalism, and would also recognize the public interest in the fluidity of our political affairs. We cannot say that Congress' choice falls

without the permissible range." *Id.* at 103-04 (internal citation omitted).[15]

The *Buckley* Court also noted that any harm to minor party interests was speculative because plaintiffs brought a facial challenge to Subtitle H, so no empirical data was available to corroborate the plaintiffs' claims. *Id.* ("Any risk of harm to minority interests is speculative due to our present lack of knowledge of the practical effects of public financing and cannot overcome the force of the governmental interests against use of public money to foster frivolous candidacies, create a system of splintered parties, and encourage unrestrained factionalism."). Although the *Buckley* Court rejected the petitioners' facial challenge to Subtitle H, the Court left open the possibility that a public financing scheme might have the practical effect of discriminating against minor parties:

> The allegations of individual discrimination are based on the claim that Subtitle H is facially invalid; since the public financing provisions have never been in operation, appellants are unable to offer factual proof that the scheme is discriminatory in its effect. In

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[15] In addition, plaintiffs in *Buckley* had argued that prior electoral success was not the best indicator of future electoral success, and that other methods would be more fair and accurate. The Court disagreed, holding that prior success in elections is a "proper measure of public support." *Id.* (citing *Jenness v. Fortson*, 403 U.S. 431 (1971)).

> rejecting appellants' arguments, we of course do not rule out the possibility of concluding in some future case, upon an appropriate factual demonstration, that the public financing system invidiously discriminates against nonmajor parties.

Id. at 97 n.131.

b. The Dissents in *Buckley*[16]

Chief Justice Burger and Justice Rhenquist dissented from Part III of the majority opinion in *Buckley*. In his dissent, Burger articulated two broad concerns. Burger's first major concern was "whether public financial assistance to the private political activity of individual citizens and parties [was] a legitimate expenditure of public funds." *Id.* at 248. Burger was particularly concerned with the fact that Congress was "actual[ly] financing, out of general revenues, a segment of the political debate itself." *Id.* He cited Senator Howard Baker's remark from the Congressional debate: "I think there is something politically incestuous about the Government financing and, I believe, inevitably then regulating, the day-to-day procedures by which the Government is selected. . . . I think it is extraordinarily important that the Government not control the machinery by which

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[16] The reasoning employed by the dissents in *Buckley* are obviously not controlling here. I note, however, that the dissenters' concerns are particularly relevant in light of the differences between the facts presented in that case and the facts alleged here.

the public expresses the range of its desires, demands, and dissent." *Id.* Burger agreed with Baker, commenting that "the inappropriateness of subsidizing, from general revenues, the actual political dialogue of the people – the process which begets the Government itself – is as basic to our national tradition as the separation of church and state also deriving from the First Amendment, or the separation of civilian and military authority, neither of which is explicit in the Constitution but both of which have developed through case-by-case adjudication of express provisions of the Constitution." *Id.* at 248-49 (citations omitted). Burger noted that recent history had shown the "dangerous examples of systems with a close, 'incestuous' relationship between 'government' and 'politics,'" and that those dangers could not be dismissed summarily by the majority's position that "Subtitle H is a congressional effort, not to abridge, restrict, or censor speech, but rather to use public money to facilitate and enlarge public discussion and participation in the electoral process, goals vital to a self-governing people." *Id.* at 249.[17] Burger's second major concern was that, even if it was constitutional to fund political candidates,

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[17] The CEP is even more "incestuous" than Subtitle H. Congress enacted Subtitle H to regulate the presidential election, not congressional elections. By contrast, the Connecticut state legislature enacted the CEP to fund elections for the Connecticut state legislature itself (as well as other state-wide executive positions). As such, the benefits the CEP provides to major parties are enjoyed directly by Connecticut state legislators, *all* of whom are members of the two major parties.

Subtitle H "invidiously discriminates against minor parties." *Id.* at 251. He agreed with the majority that "there is a legitimate governmental interest in requiring a group to make a 'preliminary showing of a significant modicum of support,'" but noted that Subtitle H "could preclude or severely hamper access to funds before a given election by a group or an individual who might, at the time of the election, reflect the views of a major segment or even a majority of the electorate." *Id.* And perhaps most significantly, Burger reasoned that: "The fact that there have been few drastic realignments in our basic two-party structure in 200 years is no constitutional justification for freezing the status quo of the present major parties at the expense of such future political movements. . . . In short, [there are] grave risks in legislation, enacted by incumbents of the major political parties, which distinctly disadvantages minor parties or independent candidates. This Court has, until today, been particularly cautious when dealing with enactments that tend to perpetuate those who control legislative power." *Id.* (citation omitted). Finally, Burger noted that Subtitle H "will invite avoidance, if not evasion, of the intent of the Act, with 'independent' committees undertaking 'unauthorized' activities in order to escape the limits on contributions." *Id.* at 253.

Justice Rhenquist also dissented from part III of the majority opinion in *Buckley*. Rhenquist first noted that he was not sure he agreed "with the Court's comment that 'public financing is generally less restrictive of access to the electoral

process than the ballot-access regulations dealt with in prior cases.'" *Id.* at 292. In comparing ballot-access laws with Subtitle H, Rhenquist noted that states must, "by definition," enact ballot-access laws to provide a republican form of government. *Id.* "The decision of the state legislature to enact legislation embodying such regulations is therefore not in any sense an optional one; there must be some standards, however few, which prescribe the contents of the official ballot if the popular will is to be translated into a choice among candidates." *Id.* at 292. Rhenquist noted, however, that "Congress . . . while undoubtedly possessing the legislative authority to undertake the task if it wished, is not obliged to address the question of public financing of Presidential elections at all. When it chooses to legislate in this area, so much of its action as may arguably impair First Amendment rights lacks the same sort of mandate of necessity as does a State's regulation of ballot access." *Id.*

Rhenquist concluded that Subtitle H was an unconstitutional exercise of Congressional power to regulate elections. He agreed that Congress "has an interest in not funding hopeless candidacies with large sums of public money, and may for that purpose legitimately require some preliminary showing of a significant modicum of support," *id.* at 293 (citations and internal quotations omitted), but concluded that, in Subtitle H, Congress had "done a good deal more than that. It has enshrined the Republican and Democratic Parties in a permanently preferred position, and has established requirements for

funding minor-party and independent candidates to which the two major parties are not subject." *Id.* Rhenquist continued that "Congress would undoubtedly be justified in treating the Presidential candidates of the two major parties differently from minor-party or independent Presidential candidates, in view of the long demonstrated public support of the former. But because of the First Amendment overtones of the plaintiffs' Fifth Amendment equal protection claim, something more than a merely rational basis for the difference in treatment must be shown, as the Court apparently recognizes." *Id.* He found it "impossible to subscribe to the Court's reasoning that because no third party has posed a credible threat to the two major parties in Presidential elections since 1860, Congress may by law attempt to assure that this pattern will endure forever." *Id.* at 293-94.

c. Unlike Subtitle H, the CEP is Alleged to Burden the Political Opportunity of Minor Parties, Primarily in One-Party-Dominant Legislative Districts

It is immediately apparent from the face of the statute itself that the CEP's qualifying criteria make it substantially more difficult for minor party candidates to receive public funds than major party candidates. In fact, plaintiffs allege that the criteria, as a practical matter, all but categorically exclude them from receiving public funds. As the Supreme Court held in *Buckley*, however, an exclusion from public funds

is not necessarily unconstitutional. *Id.* at 102 (holding that the achievements of minor political parties "were accomplished without the help of public funds," thus "the limited participation or non-participation of non-major parties or candidates in public funding does not unconstitutionally disadvantage them"). The relevant question here is thus not whether the CEP burdens minor party candidates' access to public funds, but rather, whether the CEP, as a whole, burdens their political opportunity.[18] For reasons set forth below, with respect to count one, I hold that plaintiffs have sufficiently pled that it does.

Buckley's reasoning is not controlling here for two related reasons. First, despite defendants' assertions to the contrary, *see* Def. Mem. at 16, the CEP is quite different than Subtitle H. Most significantly, the CEP was created to fund literally hundreds of general elections across the state. It determines major party status based upon the results of the preceding state-wide gubernatorial election and then uses that status as a proxy for virtually every potentially eligible candidate's chances of success in the current general election, regardless of whether the candidate is running for a state-wide or district-wide office and regardless of the composition, demographics, and voting history of any given

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[18] The *Buckley* Court did not clearly delineate the boundaries of the right to political opportunity, and I need not do so when ruling on a motion to dismiss/motion for judgment on the pleadings.

district. In short, the CEP applies a single statewide proxy to numerous district-wide elections. Subtitle H, by contrast, was designed to fund a single election. Determination of major party status under Subtitle H is dictated by the preceding presidential election, and then applied only to candidates in the current presidential election. Unlike the CEP, Subtitle H "measures support on a nation-wide basis for a national office," *Bang v. Chase*, 442 F. Supp. 758, 768 (D. Minn. 1977).[19]

Second, presidential elections are quite different than Connecticut state elections. Presidential elections are, with a few rare exceptions, always competitive, with both major party candidates enjoying significant popular support.[20] A substantial percentage of

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[19] To further illustrate the difference between the CEP and Subtitle H, I note that a federal equivalent to the CEP would involve using the results of the preceding presidential election as a proxy to determine a given candidates' chances of success in a current election for United States Senate or House of Representatives, regardless of the composition of the state or district in which that federal candidate was running and regardless of the voting history of that district for the pertinent office.

[20] There certainly have been a few routs in the electoral college since 1856. To name two of the biggest, Franklin D. Roosevelt defeated Alfred Landon in 1936 carrying 523 of the 531 electoral votes cast in that election, and Ronald Regan defeated Walter Mondale in 1984 carrying 525 of the 538 electoral votes cast in that election. Dave Liep's Atlas of U.S. Presidential Elections, *available at* Databases and E-Resources at the Library of Congress, Federal Election

Connecticut legislative elections are uncompetitive,[21] however, because many legislative districts are one-party dominant.[22]

System,
http://www.loc.gov/rr/ElectronicResources/full_description.php?MainID=245 ("Liep Atlas").

But the popular vote in the vast majority of presidential elections, including those two contests, has been fairly evenly split between Republicans and Democrats. *See id.* With a few exceptions that involved extenuating circumstances, no Democratic or Republican candidate since 1856 received less than 34 percent of the popular vote, and in almost all of those elections, the Democratic and Republican candidate both received much closer to 50 percent of the vote. *Id.*

The exceptions all involve three-way races. *Id.* In 1924, Republican Calvin Coolidge received 54.04 percent of the popular vote to defeat Democrat John Davis in the general election. *Id.* Davis received 28.82 percent of the vote, but Progressive Candidate Robert LaFollette also ran and received 16.61 percent. *Id.* In 1912, Democrat Woodrow Wilson received 41.84 percent of the popular vote to defeat Republican William Taft in the general election. *Id.* Taft received 23.17 percent of the vote, but Progressive Candidate Theodore Roosevelt also ran and received 27.40 percent. *Id.* In 1860, Republican Abraham Lincoln received 39.65 percent of the popular vote to defeat Democrat Steven Douglas in the general election. *Id.* Douglas received 29.52 percent of the popular vote, but Southern Democrat Candidate John Breckenridge and Constitutional Union Candidate John Bell also ran, collectively garnering 30.82 percent. *Id.*

[21] The plaintiffs in this case submit that in 2006, 61 of the 151 races for state representative were virtually uncontested, and major party candidates faced only token opposition from the opposing major party candidate in an additional six races. On the state senate side, nine of the 36

Because races for the presidency are highly competitive between major party candidates, it follows that: (a) both major parties will always run a candidate for president, and those candidates will always present more than mere token opposition to the opposing party; (b) major party candidates will otherwise raise and spend a substantial amount of money on the election; and (c) major party candidates will gain no financial advantage by accepting public funds under Subtitle H because the public funds merely replace private funds, and because the candidate must accept meaningful expenditure limitations.

Plaintiffs contend, however, that in one-party-dominant districts, which constitute a large portion of Connecticut legislative districts, those circumstances do not apply because: (a) The non-dominant party often does not run a candidate, or runs only a token opponent; (b) Both the token candidate (if there is one) and the dominant candidate raise and spend substantially less on

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races were virtually uncontested, and major party candidates faced only token opposition from the opposing major party candidate in an additional five races. In sum, 81 of 187 (43 percent) races for the Connecticut Generally Assembly in 2006 were uncompetitive.

[22] I use the term "one-party-dominant" district to mean a district in which either the voters registered to a particular major party materially exceed the number of voters registered to the other major party, or a district in which one party's candidate virtually always wins the general election.

the general election than the limits set forth in the CEP, which are keyed to the most expensive races; and (c) The CEP does not merely substitute public funds for private funds – it subsidizes participating candidates with greater financial resources to conduct more communicative activities than they would otherwise conduct, and virtually compels a two-party race between major party candidates where there otherwise would have been only one major party candidate running.

Taking the allegations of the amended complaint as true, the CEP has a more pervasive effect on elections than did Subtitle H. By conferring a communications benefit and compelling highly competitive two-party races in one-party-dominant districts, the CEP changes the dynamic of many state legislative races in a way that further marginalizes minor parties. Before the CEP, minor parties had greater political opportunity, and made their biggest strides, in noncompetitive districts. In the absence of substantial competition between major party candidates, plaintiffs allege that those districts proved to be fertile ground on which to spread their message. But the CEP has now created a perverse incentive for the non-dominant major party to run well-financed candidates, regardless of the party's prior success in the district, and regardless of the candidate's potential for electoral success. It compels a competitive two-party race between major party candidates in which the government finances, at exceedingly generous levels, major party

candidates' efforts to communicate their views and policies to the electorate. Minor party candidates will be crowded out of those races, and the CEP will snuff out the gains that minor parties have made. By perpetuating the two-party dominance of the Connecticut political landscape, the CEP is alleged to "disadvantage non-major parties by operating to reduce their strength below that attained without any public financing." *Buckley*, 424 U.S. at 99.

The disadvantage is exacerbated not only by the fact that the CEP is alleged to be so generous that participating candidates have no meaningful spending limits, but by the ease with which participating major party candidates can circumvent those spending limits. Take, for example, a three-way race between a publicly-funded Republican candidate, a Green Party candidate who has had some success in past elections but not enough to qualify for public funds, and a non-participating, independently-wealthy Democratic challenger. Suppose the district is a Republican-dominant district. Provided the Democratic challenger spends enough money on his own campaign, the publicly-funded Republican candidate could receive an additional public grant of up to the value of the entire original full public grant through the non-participating candidate trigger. And provided that an independent source makes enough uncoordinated expenditures on behalf of the Democratic challenger, there appears to be no statutory mechanism to prohibit the Republican candidate from receiving an additional public

grant, again, up to the value of the entire original full public grant through the independent expenditure trigger. The publicly-funded Republican has now received *three times* the original full public grant, which was, on its own, keyed to the most expensive races for that office state-wide.[23]

In addition, the publicly-funded candidate's party, or other individuals, can make virtually unlimited independent expenditures that directly advocate the election of the Republican or the defeat of the two challengers, as long as those expenditures are not coordinated by the Republican candidate or his campaign. Because of the government-funded and government-induced major-party slugfest, the Green Party candidate's modest efforts to communicate with the electorate are alleged to be further marginalized. With a few exceptions,[24] the Connecticut political landscape

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[23] Subtitle H has no similar triggers to increase public funding.

[24] In Connecticut elections, some minor parties have not only posed credible threats to the major party candidates, but have won elections. For example, in 2006, Senator Joseph I. Lieberman won election to the United States Senate as an independent candidate, running on the "Connecticut for Lieberman" ticket. In addition, in 1990, Lowell P. Weicker, Jr. won the governorship as an independent candidate on the "A Connecticut Party" ticket. Moreover, as of October 19, 2004, the number of unaffiliated registered voters in Connecticut (876,538 or 44 percent) substantially outnumbered the number of voters registered as Democrats (670,356 or 33.7 percent) and the number of voters registered as Republicans (438,554 or 22 percent). Office of the Secretary of the State, Party Enrollment in

is, and has been, soundly dominated by the major political parties. According to a March 2006 report compiled by the Connecticut Office of Legislative Research, of the 46 candidates who ran for state-wide offices in the last three general elections (i.e., 1994, 1998, and 2002), 15 were

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Connecticut (2008) *available at* http://www.sots.ct.gov/ElectionsServices/election_results/statistics/enrolhst.pdf. In fact, the percentage of unaffiliated registered voters increased in every year between 1993 and 2004, and in 2004, the last year of available statistics, the percentage of unaffiliated registered voters was higher than at any point since the state began compiling those numbers in 1958. *Id.*

The electoral successes of independent party candidates, however, are admittedly limited and can be qualified. Although Lieberman ran as an independent candidate in the 2006 general election, he is at least closely associated with the Democratic Party; he had twice previously been elected to the United States Senate as a Democrat, and only ran as an independent candidate after losing in the Democratic Party primary election. Moreover, he had gained national attention in 2000 running as a vice-presidential candidate on the Democratic ticket. (The CEP does not apply to candidates for United States Senate.)

Similarly, although Weicker won the 1990 gubernatorial election as an independent candidate, he was closely associated with the Republican Party; he had once previously won election to the United States House of Representatives as a Republican, and three times previously won election to the United States Senate as a Republican. Moreover, Weicker is the only minor party candidate to win the Connecticut governorship in well over 100 years.

minor or petitioning party candidates. Pl. Mem., ex. B, doc. # 70-3 at 1. Of the 15 minor or petitioning party candidates, 13 received less than three percent of the total votes cast for those offices, one candidate received approximately 11 percent, and one received 19 percent.[25] *Id.* The report also indicates that of the 1,115 candidates who ran for state legislative offices in the last three general elections, 166 were petitioning or minor party candidates.[26] *Id.* Of the 166 minor party candidates, 105 received less than five percent of the total votes cast for those offices, 39 candidates received between five percent and 10 percent, 18 received between 10 percent and 20 percent, and four received over 20 percent. *Id.* at 1-2. No current member of the Connecticut legislature is registered to a minor party. *See* State of Connecticut House of Representatives, House Members Listed Alphabetically, *available at* http://www.cga.ct.gov/asp/menu/hlist.asp, and Senate Members Listed Alphabetically, *available at* http://www.cga.ct.gov/asp/menu/slist.asp (last visited August 7, 2007). The numbers indicate

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[25] Eunice Groark, who served as Lieutenant Governor under Weicker and who ran to succeed him, received 18.88 percent of the popular vote as the candidate for A Connecticut Party.

[26] The OLR report, and the plaintiffs' memorandum in opposition to the instant motion, indicate that 168 independent candidates ran for political office during those elections. The table, however, indicates that only 166 independent candidates ran for political office during those elections.

that candidates of major parties wield a tremendous competitive advantage over candidates of minor parties. The Connecticut General Assembly had no obligation to pass a law that levels the playing field, but the legislature is not free to pass a law that further slants the playing field. And the fact that minor party candidates have not achieved substantial success in past elections does not mean the CEP cannot, as a matter of law, burden their political opportunity in future elections.

It is also well established that individuals generally do not have a First Amendment right to government-subsidized speech. *Rosenberger v. Rector & Visitors of the Univ. of Va.*, 515 U.S. 819, 834 (1995) ("the Government is not required to subsidize the exercise of fundamental rights"); *see also Regan v. Taxation with Representation*, 461 U.S. 540, 546, 549-50 (1983) ("We again reject the notion that First Amendment rights are somehow not fully realized unless they are subsidized by the State. . . . 'although government may not place obstacles in the path of a [person's] exercise of . . . freedom of [speech], it need not remove those not of its own creation.'") (quoting *Harris v. McRae*, 448 U.S. 297, 316 (1980)). But when the government endeavors to enter that fray and, as alleged in this case, subsidize the expression of one set of political parties' views to the exclusion of other political parties, it must do so in a way that does not alter the status quo to unfairly and unnecessarily burden the political opportunity of disfavored minor parties.

The Supreme Court's holding in *Buckley* is not controlling here, in sum, because the CEP is so fundamentally different than Subtitle H, and because Connecticut state elections are so fundamentally different than presidential elections. Unlike presidential elections, many Connecticut state elections are one-party dominant, and unlike Subtitle H, the CEP applies a state-wide proxy to hundreds of district-wide races, and is alleged to change the very dynamic of many of those races. In this case, the plaintiffs have alleged that the CEP substantially increases the ability of participating major party candidates to communicate with the electorate and compels the highest level of competition between two major party candidates. The result, plaintiffs allege, is that the CEP makes it much more difficult for minor party candidates to communicate their message to the electorate in those legislative districts. Thus, the CEP allegedly burdens their political opportunity.

Because the CEP is alleged to burden a fundamental constitutional right, specifically, minor-party political opportunity, I will apply strict scrutiny to the law. Thus, the present motions can be granted only if, based on the allegations of the complaint, the CEP is narrowly tailored to further a compelling government interest.

B. Government Interests

The *Buckley* Court held that "public financing as a means of eliminating the improper

influence of large private contributions furthers a significant governmental interest." *Id.* at 96. In this case, the CEP, as a whole, is also designed to serve the interest of eliminating the appearance of corruption by encouraging candidates for state office to forgo private donations, the traditional source of political contributions, in exchange for public funding.

The specific provision that the plaintiffs allege violates the Fourteenth Amendment, namely, the qualifying and distribution formulas, also serves an important government interest. The *Buckley* Court held that Congress had an interest "in not funding hopeless candidacies with large sums of public money." *Id.* That interest "necessarily justifies the withholding of public assistance from candidates without significant public support." *Id.* The Court concluded that "Congress may legitimately require 'some preliminary showing of a significant modicum of support' as an eligibility requirement for public funds." *Id.* Similarly, the CEP's qualifying and distribution formulas at issue are designed to protect the public fisc and prevent a raid on state funds by noncompetitive candidates.[27] I will next consider whether the CEP is narrowly tailored to achieve the interests used to justify it.

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[27] The *Buckley* Court also noted that minor parties, and society as a whole, have a countervailing interest, namely, the "present opportunity of minority parties to become major political entities if they obtain widespread support" and the "potential fluidity of American political life." *Id.*

C. Narrow Tailoring

"The narrow tailoring inquiry examines the 'fit' between means and ends. . . . In order to satisfy the 'narrow tailoring' standard, the government must also prove that the mechanism chosen is the least restrictive means of advancing that interest." *Landell v. Sorrell*, 382 F.3d 91, 125 (2d Cir. 2002), *rev'd on other grounds*, 548 U.S. 230 (2006); *see also California Democratic Party v. Jones*, 530 U.S. 567, 585-86 (2000) (observing, in dicta, that California's "blanket" partisan primary system was not narrowly tailored to further the asserted state interests because "a nonpartisan blanket primary" would advance the same interests "without severely burdening a political party's First Amendment right of association"). In this case, the CEP makes distinctions between major party candidates and minor party candidates purportedly to protect the public fisc.

1. *The Size of the Threshold*

Plaintiffs argue that the CEP is not narrowly tailored because the ten-fifteen-twenty percent stepped thresholds the legislature has chosen to apply to minor party candidates are too high. In *Buckley*, the Court upheld a significantly lower threshold, five percent, noting that "a range of formulations would sufficiently protect the public fisc and not foster factionalism, and would also recognize the public interest in the fluidity of our political affairs." *Id.* at 103-04. The Court concluded that "the choice of the percentage

requirement that best accommodates the competing interests involved" is for the legislature to make. *Id.* I need not yet decide whether, as a matter of law, the higher thresholds that the Connecticut legislature has chosen fall within the constitutionally permissible range.

I do hold, however, that because the percentages the legislature has chosen are significantly higher than the threshold upheld in *Buckley*, they are entitled to less deference. This is especially true given the fact that, if the thresholds the CEP imposes only upon the minor party candidates also applied to major party candidates in the next election cycle, major party candidates would have failed to qualify for the full complement of public funds in 43 percent of all races for the Connecticut General Assembly.[28] The same is not true under Subtitle H; in all but one election since 1856,[29] both Democratic and

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[28] Most of those candidates would not have qualified to receive any public funds.

[29] The only election in which one of the major party candidates would not have met the prior success threshold to receive public funds under Subtitle H involved extenuating circumstances not wholly related to a lack of public support. In 1916, Republican candidate Charles Hughes would not have qualified for public funding because the Republican candidate in 1912, William Taft, received only 23.17 percent of the popular vote, just shy of the 25 percent threshold. Leip Atlas. Again, however, the 1912 election was a three-way race between Woodrow Wilson, William Taft, and Progressive Candidate Theodore Roosevelt. *Id.* Taft split the vote with Progressive Candidate Theodore Roosevelt, who also ran and garnered 27.40 percent. *Id.*

Republican presidential candidates would have met the twenty-five percent threshold Subtitle H imposes, and would thus have qualified to receive full public funding.

2. *The Application of the Threshold Only to Minor Party Candidates*

The size of the ten-fifteen-twenty percent stepped thresholds is not as problematic as the fact that the thresholds apply only to minor party candidates in the first instance. Plaintiffs argue that it is unfair to impose additional qualifying requirements only on minor party candidates because, in one-party-dominant districts, the minor party candidate's chances to win the general election are as good as, or better than, the token (or nonexistent) major party candidate, yet the token major party candidate is presumptively entitled to the full complement of public funds, whereas the minor party candidate must show additional "modicums of support." That argument is persuasive. Indeed, in those districts, major party candidates have proven to be just as capable of running hopeless candidacies, or no candidacies at all, as minor party candidates. Defendants have suggested no good reason why the legislature sought to protect the public fisc from hopeless minor party candidacies, on the one hand, while spending significant sums of money on hopeless major party candidacies, on the other.

In short, the CEP treats things that are exactly alike, namely, hopeless candidacies, as though they were different. Thus, *Buckley* does not protect the CEP from constitutional challenge.

3. *Comparisons With Other States' Laws*

Connecticut is not the first state to enact a public funding law. In determining the validity of imposing the discriminatory qualifying criteria that the Connecticut legislature has chosen, an examination of other states' laws is useful.[30] I begin with Maine and Arizona – the two states that have enacted public funding laws that the defendants argue are similar to the CEP.

a. Maine

In 1996, Maine voters approved the Maine Clean Elections Act, Me. Rev. Stat. tit. 21-A §§ 1121, *et seq.* ("Maine Act"), which created a voluntary system of public funding in which candidates for governor, state senate, and state house of representatives may elect to participate. Me. Rev. Stat. tit. 21-A § 1122. To qualify for public funds under the Maine Act, all candidates, regardless of party affiliation, must raise a

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[30] For a fuller discussion of some state public financing laws, *see* Jason B. Frasco, *Full Public Funding: An Effective and Legally Viable Model for Campaign Finance Reform in the States*, 92 CORNELL L. REV. 733 (2007) ("Frasco Public Funding Article"); *see also* Brennan Center for Justice, Campaign Finance Reform, *available at* http://www.brennancenter.org/content/section/category/campaign_finance_reform/.

certain amount of "qualifying contributions." Me. Rev. Stat. tit. 21-A § 1124(3).[31] Once the candidate raises the required qualifying contributions,[32] which vary depending upon the office sought,[33] the candidate is qualified to receive public funds, as long as the candidate has complied, and continues to comply, with the Act's other provisions. Me. Rev. Stat. tit. 21-A § 1125(5). The Maine Act is party-neutral; it has no prior success formula, and imposes no other qualifying criteria only on minor party candidates.

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[31] Before raising qualifying contributions, candidates who wish to participate must declare their intent, Me. Rev. Stat. tit. 21-A § 1125(1), and may first raise "seed money contributions," not to exceed 100 dollars per contributor, to defray campaign costs incurred only before the candidate is certified. Me. Rev. Stat. tit. 21-A §§ 1122(9), 1125(2-A).

[32] A "qualifying contribution" is a donation "A. Of $5 in the form of a check or a money order payable to the [Maine Clean Election Fund], signed by the contributor and made in support of a candidate; B. Made by a registered voter within the electoral division for the office a candidate is seeking and whose voter registration has been verified by the municipal registrar; C. Made during the designated qualifying period; and D. That the contributor acknowledges was made with the contributor's personal funds and in support of the candidate and was not given in exchange for anything of value . . . ." Me. Rev. Stat. tit. 21-A § 1122(7).

[33] Candidates for governor must obtain at least 3,250 qualifying contributions, candidates for state senate must obtain at least 150 qualifying contributions, and candidates for state house of representatives must obtain 50 qualifying contributions. Me. Rev. Stat. tit. 21-A § 1125(3).

The amount of public funds that a participating candidate will receive depends upon whether the election is contested or uncontested:

> For contested legislative general elections, the amount of revenues distributed is the average amount of campaign expenditures made by each candidate during all contested general election races for the immediately preceding 2 general elections, as reported in the initial filing period subsequent to the general election, for the respective offices of State Senate and State House of Representatives. For uncontested legislative general elections, the amount of revenues to be distributed from the fund is 40% of the amount distributed to a participating candidate in a contested general election.

Me. Rev. Stat. tit. 21-A §§ 1125(8)(C), (8)(D). Participating candidates for the gubernatorial general election receive 600,000 dollars. Me. Rev. Stat. tit. 21-A § 1125(8)(F).[34]

Noticeably, the Maine Act differs from the CEP in at least two respects. First, the Maine Act contains no distinctions between major party candidates and minor party candidates; all

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[34] Under the CEP, participating candidates for the gubernatorial general election receive 3,000,000 dollars. Conn. Gen. Stat. § 9-705(a)(2).

candidates are treated equally regardless of party affiliation. Second, the amount of public funds available to participating candidates is not one-size-fits-all. Instead, the amount of public funding depends upon whether a given race is contested. Moreover, "[t]he amount of the initial distribution is the average amount of campaign expenditures in the prior two election cycles for the particular office," *Daggett v. Commission on Governmental Ethics & Election Practices*, 205 F.3d 445, 451 (1st Cir. 2000), whereas the plaintiffs here allege the CEP is keyed to the most competitive and expensive races in the state.

The First Circuit Court of Appeals considered the constitutionality of the Maine Act in *Daggett*.[35] Relying on the proposition that limits on expenditures are generally otherwise unconstitutional, *see Buckley*, 424 U.S. at 44, plaintiffs argued, in that case, that the Maine Act "is unconstitutional because it is impermissibly coercive – that is, it provides so many incentives to participate and so many detriments to foregoing participation that it leaves a candidate with no reasonable alternative but to seek qualification as a publicly-funded candidate." *Daggett*, 205 F.3d at 466. Because the candidate

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[35] The *Daggett* Court also considered the constitutionality of other provisions of the Maine Act, including the triggering provisions and the contribution limits. In addition, several lobbying organizations had earlier challenged a provision of the law that imposed a registration fee on lobbyists. *See National Right to Life PAC State Fund v. Devine*, 1997 U.S. Dist. LEXIS 12637 (D. Me. 1997).

is "coerced" to accept the funds, they are also "coerced" to accept the expenditure ceilings and an allegedly inadequate level of funding to run a successful campaign.[36] The *Daggett* Court held that "the appropriate benchmark of whether candidates' First Amendment rights are burdened by a public funding system is whether the system allows candidates to make a 'voluntary' choice about whether to pursue public funding." *Id.* at 467. "[T]he government may create incentives for candidates to participate in a public funding

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[36] Central to many cases challenging campaign finance reform laws is the expenditure-donation dichotomy. The general principle set forth in *Buckley* is that expenditure caps are generally unconstitutional (unless voluntarily accepted by a candidate as a part of a public funding program), whereas caps on donations to candidates are, with a few exceptions, usually held to be constitutional. *But see Randall v. Sorrell*, 548 U.S. 230 (2006).

In *Randall v. Sorrell*, the Supreme Court recently considered the constitutionality of a Vermont law that reduced both contribution limits and expenditure limits. The district court had held that some of the contribution limits were unconstitutionally low, and that the expenditure limits were *per se* unconstitutional under *Buckley*. In *Landell v. Sorrell*, 382 F.3d 91, the Second Circuit Court of Appeals reversed the district court, holding that all of the contribution limits were unconstitutional, and that the expenditure limitations might be constitutional if they survived strict scrutiny. *Id.*

The Supreme Court then reversed the Second Circuit Court of Appeals. The Court held that the expenditure limits were *per se* unconstitutional. *See Randall*, 126 S. Ct. at 2488. The Court also held the contribution limits were unconstitutionally low. *Id.* at 2500.

system in exchange for their agreement not to rely on private contributions." *Id.* The Court ultimately rejected the plaintiffs' coercion argument as internally inconsistent – "if the sums are unreasonably low, they will not attract, much less coerce, participation." *Id.* at 467-68.

But the *Daggett* opinion is not relevant here because the plaintiffs make the opposite argument. The plaintiffs in *Daggett* argued that the Maine Act, in effect, coerced participation, whereas the plaintiffs here argue that they are categorically prohibited from participating. Moreover, the plaintiffs in *Daggett* alleged that the public funds under the Maine Act were woefully inadequate, whereas the plaintiffs here allege that the public funds are excessive. And most significantly, the plaintiffs in *Daggett* did not challenge the law based upon its disparate treatment of minor party candidates because the Maine Act makes no distinctions in its qualifying criteria based solely upon party affiliation.

b. Arizona

In 1998, Arizona voters adopted, as an initiative, the Citizens Clean Elections Act, Ariz. Rev. Stat. §§ 16-901, *et seq.* ("Arizona Act"), which created a voluntary system of public funding in which candidates for governor, secretary of state, attorney general, treasurer, superintendent of public instruction, corporation commission, mine inspector, and state legislature may elect to participate. *See* Ariz. Rev. Stat. § 16-950(D). To qualify for public funds, all candidates, regardless

of party affiliation, must raise a certain amount of "qualifying contributions." Ariz. Rev. Stat. § 16-950.[37] Once the candidate raises the required qualifying contributions,[38] which vary depending upon the office sought,[39] the candidate is qualified to receive public funds as long as the candidate has complied, and continues to comply, with the Act's other provisions. Ariz. Rev. Stat. § 16-950. The Arizona Act is substantially party-neutral; it has no prior success formula, and imposes no other qualifying criteria only on minor party candidates.

Although the Arizona Act's qualifying criteria are similar to those of the Maine Act, the

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[37] Before raising qualifying contributions, candidates who wish to participate must apply through the secretary of state, Ariz. Rev. Stat. § 16-947, create a single campaign account, Ariz. Rev. Stat. § 16-948, and may first collect "early contributions," not to exceed 100 dollars per contributor, to defray campaign costs incurred only before the end of the qualifying period. Ariz. Rev. Stat. § 16-945.

[38] A "qualifying contribution" is a donation of exactly five dollars made payable to the candidate's campaign committee, or, if cash, deposited in the candidate's campaign account, and "[a]ccompanied by a three-part reporting slip." Ariz. Rev. Stat. § 16-946.

[39] Candidates for governor must obtain 4,000 qualifying contributions, candidates for secretary of state and attorney general must obtain 2,000 qualifying contribution, candidates for treasurer, superintendent of public instruction and corporation commission must obtain 1,500 qualifying contributions, candidates for mine inspector must obtain 500 qualifying contributions, and candidates for the legislature must obtain 200 qualifying contributions. Ariz. Rev. Stat. § 16-950(D).

distribution formulas differ slightly. Instead of averaging the amounts spent in prior elections and setting a specific value for the gubernatorial race, the Arizona Act sets specific values for each election and adjusts those values to account for inflation. Ariz. Rev. Stat. § 16-959.[40] Like the Maine Act, the Arizona Act adjusts for uncompetitive districts. Ariz. Rev. Stat. § 16-952. Unlike the Maine Act, however, the Arizona Act

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[40] The specific grants for the primary and general elections are set forth in a table compiled by the secretary of state. Ariz. Rev. Stat. §§ 16-959, 16-961(H).

I note that plaintiffs in this case argue that their disadvantage is exacerbated, in part, by the fact that the funding levels under the CEP are excessively high. Although the specific funding levels are, to a large extent, within the legislature's discretion, plaintiffs derive factual support from their argument in the disparity between the CEP's limits and the Arizona Act's limits. The spending limits for the 2008 elections under the Arizona Act are as follows: 736,410 dollars for the governor; 155,042 dollars for Secretary of State; 155,042 dollars for Attorney General; 77,513 dollars for Treasurer; and 19,382 dollars for legislature. Ariz. Rev. Stat. §§ 16- 959, 16-961(H). The limits under the CEP are: 3,000,000 dollars for governor; 750,000 dollars for secretary of state, attorney general, and state treasurer; 85,000 dollars for state senator; and 25,000 dollars for state representative. Conn. Gen. Stat. § 9-705(a)(2), (b)(2), (e)(2), (f)(2).

The disparity between Connecticut's limits and Arizona's limits is particularly stark given the fact that Arizona (approximately 6.3 million people) has almost twice the population as Connecticut (approximately 3.5 million people), and that Arizona (113,998 square miles) is more than 20 times the geographic area of Connecticut (5,543 square miles).

does not reduce a participating candidate's general election grant in a "one-party-dominant"[41] race, but rather, gives the candidate the option to reallocate a portion of the candidate's general election funds to the primary election. Ariz. Rev. Stat. § 16-952(D). Finally, the Arizona Act also makes some distinctions in distributions based upon party status. It provides that qualifying independent candidates receive "an amount equal to seventy percent of the sum of the original primary election spending limit and the original general election spending limit." Ariz. Rev. Stat. § 16-951.

The Arizona Act has been challenged on several occasions. The plaintiffs in those cases generally raised issues not relevant to the issues here.[42] In *Ass'n of Am. Physicians & Surgs v.*

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[41] The Arizona Act defines "a one-party-dominant legislative district" as "a district in which the number of registered voters exceeds the number of registered voters registered to each of the other parties by an amount at least as high as ten percent of the total number of voters registered in the district." Ariz. Rev. Stat. § 16-952(D).

[42] In *Citizens Clean Elections Comm'n v. Myers*, 196 Ariz. 516 (2000), several parties challenged the provision of the Arizona Act that created the Citizens Clean Elections Commission, the Commission charged with administering the Arizona Act. The parties alleged that the manner in which members were appointed to the Commission violated the Arizona state constitution.

In *Lavis v. Bayless*, 233 F. Supp. 2d 1217 (D. Ariz. 2001), several parties challenged a provision of the Arizona Act that imposed several assessments on civil and criminal fines, and a surcharge on lobbyists, to finance the pubic

Brewer, 363 F. Supp. 2d 1197 (D. Ariz. 2005), however, the plaintiffs argued that the equal funding provision violates the First Amendment by "coercing involuntary participation in public campaign financing," because it "punishes" candidates who choose not to participate.[43] *Id.* at 1199. The equal funding provision provided triggering mechanisms similar to the CEP, *see* Ariz. Rev. Stat. §§ 16-952(A), (B), and allowed participating candidates in one-party-dominant districts to reallocate some of their general election funds to the primary election, Ariz. Rev. Stat. § 16-952(D). Again, like the challenge to the Maine Act in *Daggett*, the alleged injury in *Brewer* derived from the fact that the candidates were coerced to accept public funds and the accompanying expenditure limitations, whereas the alleged injury in this case is that the candidates are effectively prohibited from participating. The *Brewer* Court ultimately ruled for the defendants and dismissed the plaintiffs' claims.

c. North Carolina

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funding program. The parties alleged that the assessments violated the First and Fourteenth Amendments to the United States Constitution. In *May v. McNally*, 203 Ariz. 425 (2002), the plaintiff brought a similar challenge.

[43] Plaintiffs in *Brewer* also challenged the triggering provisions in Ariz. Rev. Stat. § 16- 952. Those issues are discussed below.

In 2002, the North Carolina legislature passed the North Carolina Judicial Campaign Reform Act, N.C. Gen. Stat. Ann. §§ 163-278.61, *et seq.* ("North Carolina Act"), which created a voluntary system of public funding in which candidates for Supreme Court justice and Court of Appeals judge may elect to participate. N.C. Gen. Stat. Ann. § 163-278.61. Aside from the fact that the public funding program applies only to certain judges and justices of the judiciary, the North Carolina Act is similar to the Arizona and Maine Acts in most other critical respects. To qualify for public funds under the North Carolina Act, all candidates, regardless of party affiliation, must raise a certain amount of "qualifying contributions." N.C. Gen. Stat. Ann. § 163-278.64(b).[44] Once the candidate raises the required 350 qualifying contributions,[45] the candidate is qualified to receive public funds as long as the candidate has complied, and continues to comply, with the Act's other provisions. *See*

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[44] Before raising qualifying contributions, candidates who wish to participate must declare their intent to participate, N.C. Gen. Stat. Ann. § 163-278.64(a), and may collect donations beginning January 1 of the year before the election and before the filing of a declaration of intent to defray campaign costs incurred before the end of the qualifying period. N.C. Gen. Stat. Ann. § 163-278.64(d).

[45] A "qualifying contribution" is a donation of not less than 10 dollars and not more than 500 dollars in the form of a check or money order to the candidate or the candidate's committee . . . ." N.C. Gen. Stat. Ann. § 163-278.62(15). Each candidate must raise at least 30 times the candidacy filing fee, but no more than 60 times the filing fee. N.C. Gen. Stat. Ann. §§ 163- 278.62(9), (10).

N.C. Gen. Stat. Ann. § 163-278.64. The North Carolina Act is party-neutral; it has no prior success formula, and imposes no other qualifying criteria only on minor party candidates.

The amount of public funds that a participating candidate will receive under the North Carolina Act is based upon whether the election is contested or uncontested.[46] For uncontested primaries, no funds are distributed. N.C. Gen. Stat. Ann. § 163-278.65(b)(1). For contested primaries, only "rescue funds"[47] are distributed. N.C. Gen. Stat. Ann. § 163-278.65(b)(2). For uncontested general elections, no funds are distributed. N.C. Gen. Stat. Ann. § 163-278.65(b)(3). For contested general elections, full funds are distributed. N.C. Gen. Stat. Ann. N.C. Gen. Stat. Ann. § 163-278.65(b)(4).

In *Jackson v. Leake*, 2006 U.S. Dist. LEXIS 55017 (M.D.N.C. 2006), several judicial candidates challenged the law as unconstitutional. Specifically, the candidates challenged the provisions: (1) requiring

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[46] A "contested" election means any election "in which there are more candidates than the number to be elected." N.C. Gen. Stat. Ann. § 163-278.62(4).

[47] Rescue funds are, essentially, funds distributed to a participating candidate when the candidate is outspent. *See* N.C. Gen. Stat. Ann. § 163-278.67. In the case of primary elections, rescue funds are triggered when a participating candidate's opponent spends an amount that exceeds the maximum qualifying contributions for participating candidates. N.C. Gen. Stat. Ann. § 163-278.62(18).

"nonparticipating candidates to report campaign contributions or expenditures that exceed certain specified trigger amounts to the Board within 24 hours," along with "any independent entities making expenditures in support of a nonparticipating candidate to make similar reports to the Board;" (2) providing for "rescue funds" for "participating candidates in the event the expenditures of a nonparticipating candidate . . . exceed certain specified trigger amounts;" (3) prohibiting "contributions to the campaign of any candidate during the period beginning 21 days before the general election and ending the day after the general election;" and (4) requiring "every active member of the North Carolina State Bar to pay a $50 fee for the support of the North Carolina Public Financing Fund." *Id.* at *5-6.

The parties argued, among other things, whether the North Carolina Act "places nonparticipating candidates at a distinct disadvantage relative to participating candidates." *Jackson v. Leake*, 476 F. Supp. 2d 515, 529 (E.D.N.C. 2006).[48] Contrary to the argument raised here, however, the plaintiffs in *Jackson* argued, in essence, that the public funding program coerces participation, and thus, coerces acceptance of an unconstitutional expenditure limit. The *Jackson* Court rejected those arguments, holding that it "simply

[48] The parties in *Leake* advanced several other claims. Only their last claim, which relates to the public funding system as a whole, is relevant.

disagrees with plaintiffs' argument that the scheme's reporting provision, trigger, and 21 day provision unfairly or unnecessarily burden nonparticipating candidates' political opportunities, given the important interests advanced by the public financing scheme." *Id.* at 530.

d. Minnesota

Originally enacted in the 1970s and reformed on multiple subsequent occasions, the Ethics in Government Act, Minn. Stat. §§ 10A.01, *et seq.* ("Minnesota Act"), created a voluntary system of public funding in which candidates for governor, lieutenant governor, attorney general, secretary of state, state auditor, state senate and state house of representatives may elect to the gubernatorial race, and, depending upon the election cycle, 23 and 1/3 percent are allocated to participate. *See* Minn. Stat. § 10A.323. To qualify for public funds under the Minnesota Act, all candidates, regardless of party affiliation, must raise a certain amount of contributions. Minn. Stat. § 10A.323.[49] Once the candidate raises the required contributions,[50] which vary depending

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[49] Before raising qualifying contributions, candidates who wish to participate must declare their intent to participate. Minn. Stat. § 10A.14 (Subd. 1).

[50] A contribution is a donation from persons eligible to vote in the state up to the limits of the Act, but only the first 50 dollars from each contributor counts towards satisfying the contribution minimums. Minn. Stat. § 10A.323.

upon the office sought,[51] the candidate is qualified to receive public funds as long as the candidate has complied, and continues to comply, with the Act's other provisions. Minn. Stat. §§ 10A.322, 10A.323. The Minnesota Act, like the North Carolina, Maine, and Arizona Acts, is party-neutral; it has no prior success formula, and imposes no other qualifying criteria only on minor party candidates.

The funding of Minnesota Act and the distribution formula, however, are more complex. Although it has evolved through the years, the Minnesota Act is currently funded, in large part, by a tax-check-off system. The system allows taxpayers to allocate five dollars of their income tax liability to the general election account, or to the election account of a specific political party. Minn. Stat. § 10A.31 (subd. 1). The money is allocated within the respective accounts on a percentage basis according to the particular office sought.[52] Minn. Stat. § 10A.31 (subd. 5). The

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[51] Candidates for governor and lieutenant governor running together must collectively obtain 35,000 dollars in contributions, candidates for attorney general must obtain 15,000 dollars, candidates for secretary of state and state auditor must obtain 6,000 dollars, candidates for state senate must raise 3,000 dollars, and candidates for state house of representatives must raise 1,500 dollars. Minn. Stat. § 10A.323.

[52] For example, within the general account, 21 percent of the funds are allocated to races for the state senate, and 46 and 2/3 percent are allocated to races for the state house of representatives. Minn. Stat. § 10A.31 (subd. 5(a)). Within the party-specific accounts, 14 percent of the funds are

funds are then distributed to the candidates using the given percentages, but limited to 50 percent of the designated total spending limit for the particular office.

Significantly, under the Minnesota Act as originally enacted in 1974, "winners of the primary election of each party for the state senate and house of representatives share[d] equally in the funds allocated to their respective offices from their party account. Thus the funding for the specific party accounts is determined by taxpayer preference on a state-wide basis while the party accounts are required to be distributed at the legislative district level." *Bang*, 442 F. Supp. At 768. In other words, regardless of whether taxpayers in a given legislative district contributed substantially more to a party's general account, the funds in the account were nevertheless evenly distributed throughout all legislative districts.

Several parties challenged the distribution formula, along with other provisions of the Minnesota Act, in *Bang v. Chase*, 442 F. Supp. 758.[53] The *Bang* Court held the distribution

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allocated to the gubernatorial race, and, depending upon the election cycle, 23 and 1/3 percent are allocated to races for the state senate, and 46 and 2/3 percent are allocated to races for the state house of representatives. Minn. Stat. § 10A.31 (subd. 5(b)).

[53] Since its enactment, the Minnesota Act has been challenged on multiple occasions. *E.g.*, *Day v. Holahan*, 34 F.3d 1356 (8th Cir. 1994); *Rosenstiel v. Rodriguez*, 101 F.3d 1544 (8th Cir. 1996); *Weber v. Heany*, 793 F. Supp. 1438 (D.

formula unconstitutional, reasoning that "the aggregate political party preferences expressed by all the state taxpayers in Minnesota have no rational relation to the support for particular parties or for particular candidates within legislative districts. Under this distribution scheme, a party with state-wide plurality can unfairly disadvantage its opponents in those districts where it enjoys little district support." *Id.* at 768. The *Bang* Court thus concluded that "the method of distribution of public campaign funds . . . invidiously discriminates between candidates of different political parties and abridges the First Amendment right of political association." *Id.* Although not identical, *Bang* appears to be the closest analog to the plaintiffs' claims in this case.

e. Massachusetts

In 1998, Massachusetts voters approved the Massachusetts Clean Elections Law, Mass. Gen. Laws ch. 55A §§ 1, *et seq.* (repealed) ("Massachusetts Act"), which created a voluntary

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Minn. 1992). I note that the plaintiffs in *Rosenstiel* raised claims similar to those made in *Daggett*, *Jackson* and *Brewer*, namely, that the public funding option set forth in the Minnesota Act is "so attractive" that the Act "effectively compel[s] candidates to enroll in the State's financing plan," and thus, the candidates are effectively compelled to accept the expenditure limits. *Rosenstiel*, 101 F.3d at 1549. The Eighth Circuit disagreed, reasoning that participation in the public funding system is "truly voluntary." *Id.* at 1550-51. The *Rosenstiel* Court concluded that the statute achieves "the rough proportionality necessary to entice, but not coerce, candidate participation." *Id.* at 1551.

system of public funding in which candidates for governor, lieutenant governor, attorney general, treasurer and receiver general, state secretary, auditor, councillor, state senator, and state representative may elect to participate. Mass. Gen. Laws. ch. 55A § 7 (repealed). To qualify for public funds under the Massachusetts Act, all candidates, regardless of party affiliation, must raise a certain amount of "qualifying contributions." Mass. Gen. Laws. ch. 55A § 4 (repealed).[54] Once the candidate raises the required qualifying contributions,[55] which vary depending upon the office sought,[56] the candidate is qualified to receive public funds as long as the candidate has complied, and continues to comply, with the Act's other provisions. Mass. Gen. Laws. ch. 55A § 5 (repealed). The Massachusetts Act was also neutral; it had no prior success formula,

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[54] Candidates who wish to participate must declare their intent. Mass. Gen. Laws. ch. 55A § 3 (repealed).

[55] A "qualifying contribution" is a contribution of at least five dollars to a participant made during the qualifying period. Mass. Gen. Laws. ch. 55A § 1 (repealed).

[56] Candidates for governor must obtain 6,000 qualifying contributions, lieutenant governor, attorney general, and treasurer and receiver general must obtain 3,000 qualifying contributions, candidates for state secretary and auditor must obtain 2,000 qualifying contributions, candidates for councillor must obtain 400 qualifying contributions, candidates for state senator must obtain 450 qualifying contributions, and candidates for state representative must obtain 200 qualifying contributions. Mass. Gen. Laws. Ch. 55A § 4 (repealed)

and imposed no other qualifying criteria only on minor party candidates.

The Massachusetts Act, however, was never put into effect because, in 2002, the legislature refused to release the funds to the public funding system. Proponents of the Massachusetts Act brought suit "against the director of the office of campaign and political finance . . . and the Secretary of the Commonwealth . . . . They sought a declaration that any Massachusetts State or State-wide election held without access to the funds mandated by the clean elections law would violate both art. 48 [of the Massachusetts Constitution] and the clean elections law. They also sought permanent injunctive relief ordering the director to provide public campaign funds to all candidates entitled to such funds, and barring the Secretary from holding any elections unless and until such funds had been made available to all eligible candidates." *Bates v. Dir. of the Office of Campaign & Political Fin.*, 436 Mass. 144, 147 (2002). The Court did not order the relief sought, but the Massachusetts legislature nevertheless repealed the Massachusetts Act, 2003 Mass. Legis. Serv. 26, 43 (LexisNexis), and the law never became effective.[57]

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[57] The Massachusetts legislature did enact a much less comprehensive public funding law that awards matching funds to certain qualifying candidates who agree to expenditure limits and otherwise comply with the new Act. Mass. Gen. Laws. ch. 55C §§ 1, *et seq.*

f. Vermont

In 1997, Vermont enacted the Vermont Campaign Finance Reform Act, Vt. Stat. Ann. tit. 17 §§ 2801, *et seq.* ("Vermont Act"), which created a voluntary system of public funding in which candidates for governor and lieutenant governor may elect to participate. Vt. Stat. Ann. tit. 17 § 2855. To qualify for public funds under the Vermont Act, all candidates, regardless of party affiliation, must raise a certain amount of "qualifying contributions." Vt. Stat. Ann. tit. 17 § 2854.[58] Once the candidate raises the required qualifying contributions,[59] which vary depending upon the office sought,[60] the candidate is qualified to receive public funds, as long as the candidate has complied, and continues to comply, with the Act's other provisions. Vt. Stat. Ann. tit. 17 § 2853. The Vermont Act is also party-neutral; it has no prior success formula, and imposes no other qualifying criteria only on minor party candidates. Certain provisions of the Vermont Act

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[58] Any candidate who wishes to participate must file a campaign finance affidavit. Vt. Stat. Ann. tit. 17 § 2852.

[59] A "qualifying contribution" is a donation of a maximum of 50 dollars. Vt. Stat. Ann.tit. 17 § 2854.

[60] Candidates for governor must obtain at least 35,000 dollars from no fewer than 1,500 qualified individuals, and candidates for lieutenant governor must raise at least 17,500 dollars from no fewer than 750 qualified individuals. Vt. Stat. Ann. tit. 17 § 2854.

have been challenged,[61] but the public funding provision remains intact.

g. Other States

A number of other states have passed either full or partial public funding laws. *See* Fla. Stat. §§ 106.030-35 (matching funds for qualifying gubernatorial and state cabinet candidates); Haw. Rev. Stat. §§ 11-217-225 (partial funds for qualifying gubernatorial, state legislative, and other candidates); Md. Code Ann. §§ 15-101 11 (matching funds for qualifying gubernatorial and lieutenant gubernatorial candidates); Mich. Comp. Laws §§ 169.201-282 (matching funds for the primary election and partial funds for the general election to qualifying gubernatorial candidates);[62] Neb. Rev. Stat. §§ 32-1601-1613 (partial funds for qualifying gubernatorial and other candidates for state-wide office who are outspent by their opponents); R.I. Gen. Laws

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[61] *E.g.*, *Randall v. Sorrell*, 548 U.S. 230; *Landell v. Sorrell*, 382 F.3d 91.

[62] The Michigan Act, like the CEP, imposes a prior success requirement on minor party candidates. Mich. Comp. Laws § 169.265. The statute is easily distinguishable from the CEP, however, because (a) the threshold for major party status under the Michigan Act (five percent of the gubernatorial vote) is much lower than the threshold for major party status under the CEP (20 percent), *id.*; (b) the Michigan Act does not use a state-wide measure of support as a proxy for district-wide elections because public funds under the Michigan Act are only available for the state-wide gubernatorial race and not to district-wide legislative races, *id.*, and (c) only partial funding is available under the Michigan Act, *id.*

§§ 17-25-18-30.1 (matching funds for qualifying gubernatorial and other candidates for state-wide office);[63] N.M. Stat. §§ 1-19A-1-17 (full funding for qualifying judicial candidates and candidates running for a seat on the Public Regulation Commission).[64] Of those states, none impose qualifying criteria analogous to the CEP, and

[63] The Rhode Island Act requires independent candidates to raise additional private funds, R.I. Gen. Laws § 17-25-20(6), but again, the statute is also easily distinguishable from the CEP for essentially the same reasons that the Michigan Act is distinguishable: (a) the threshold for "political party" status is 5 percent of either the gubernatorial vote or the presidential vote, and the threshold can also be satisfied through a 5 percent petitioning requirement, *see* R.I. Gen. Laws §§ 17-1-2(4), (9), 17-25-20(6); (b) the Rhode Island Act does not use a state-wide measure of support as a proxy for district-wide elections; (c) and only matching funds are available under the Rhode Island Act. R.I. Gen. Laws. § 17-25-20. In addition, if the Rhode Island Act did not impose the requirements on independent candidates, "any independent candidate who met the very modest nomination paper signature requirement would be eligible for State funds. This would place a significant burden on a limited supply of funds." *Gill v. Rhode Island*, 933 F. Supp. 151, 160 (D.R.I. 1996). The CEP, however, has substantial requirements in addition to the qualifying criteria to safeguard the public fisc.

[64] In addition to those states, New York City also offers matching funds for qualifying candidates for mayor, public advocate, comptroller, borough president, or member of the city council city offices. N.Y.C., N.Y., Admin. Code §§ 3-701, *et seq.* Like most of the above-cited state laws, New York City's public funding program, and specifically, the qualifying criteria, are also party-neutral, and the amount of matching funds depends, in part, on the extent to which a participating candidate is opposed. *See id.*

more specifically, none of those states use the results of a single state-wide election as a proxy for a given candidate's level of support in a district-wide election.

D. Conclusion Regarding Count One

Almost all other state public funding laws, except for the CEP, are party-neutral, and the few that are not do not impose qualifying criteria that are even remotely similar to the CEP's qualifying criteria. It thus appears more than possible to weed out hopeless candidacies and avoid a doomsday raid on the public fisc through party-neutral qualifying criteria, or at least without the proxy that the Connecticut legislature has chosen.[65] I thus hold that plaintiffs are entitled to present evidence to prove that the CEP is not

[65] For example, at the motion to dismiss/judgment on the pleadings stage there is no record evidence to show whether or not the discriminatory qualifying criteria would save the CEP from being prohibitively expensive. *See* Suzanne Novak and Seema Shah, Reform New York Series, Paper Thin: The Flimsy Facade of Campaign Finance Laws in New York State, p. 16 *available at* http://brennan.3cdn.net/20b4bbcfae6a61b5bc_kfm6b5l2q.pdf (stating that "[w]hile public financing systems cost money, even full public financing can be relatively inexpensive per voter. A few dollars per taxpayer per year can cover the costs of a full public financing system for all state offices. For instance, an analysis of the cost of the public financing systems in Maine, Arizona, and New York City reveals that those systems have cost a mere $1.61-$6.96 per person of voting age"). The parties are free to develop that evidence through discovery.

narrowly tailored to meet its stated objective of protecting the public fisc.[66]

Plaintiffs have alleged that the CEP burdens their political opportunity, and that the law is not sufficiently tailored to meet the state's compelling interests. As such, plaintiffs have pled a viable equal protection claim in count one, and defendant's motion to dismiss/motion for judgment on the pleadings is DENIED with respect to that count.

V. Counts Two and Three – Do the Non-Participating Candidate and Independent Expenditure Triggers Violate the First Amendment?

Plaintiffs argue that the non-participating candidate trigger and the independent expenditure triggers violate the First Amendment rights of non-participating candidates. To determine whether a campaign finance law unconstitutionally infringes upon an individual's right to free speech, the Court must "decide whether the provision in question actually

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[66] I note that, although it would be a much closer case, I would have also denied the defendants' motions even upon rational basis review. *See Bang v. Chase*, 442 F. Supp. at 768 ("the aggregate political party preferences expressed by all the state taxpayers in Minnesota have no rational relation to the support for particular parties or for particular candidates within legislative districts. Under this distribution scheme, a party with state-wide plurality can unfairly disadvantage its opponents in those districts where it enjoys little district support.").

burdens the exercise of political speech and, if it does, whether it is narrowly tailored to serve a compelling state interest." *Rosenstiel v. Rodriguez*, 101 F.3d at 1549.

Plaintiffs argue that the triggers burden the exercise of free speech because they cause additional funds to be released if either an independent party or a non-participating candidate engages in political speech in excess of the expenditure limits, thus discouraging the potential speaker from making the expenditure. In short, plaintiffs argue that their speech is chilled by the threat of responsive speech.

The only source of support for plaintiffs' argument is *Day v. Holahan*, 34 F.3d 1356 (8th Cir. 1994). In that case, the Eighth Circuit Court of Appeals considered whether an independent expenditure trigger violated the First Amendment. The *Day* Court held that "[t]he knowledge that a candidate who one does not want to be elected will have her spending limits increased and will receive a public subsidy equal to half the amount of the independent expenditure, as a direct result of that independent expenditure, chills the free exercise of that protected speech." *Id.* at 1360. In short, the Eighth Circuit equated responsive speech with an impairment to the initial speaker.

All other courts to consider the issue have either questioned *Day*'s logic outright, or have distinguished *Day* on its facts. *See Daggett v. Commission on Governmental Ethics & Election Practices*, 205 F.3d at 465, 465 n.25 (holding that

it could not "adopt the logic of *Day*, which equates responsive speech with an impairment to the initial speaker. . . . the continuing vitality of *Day* is open to question."); *Jackson v. Leake*, 476 F. Supp. 2d at 529 (quoting *Daggett* at length for the same proposition); *Ass'n of Am. Physicians & Surgs v. Brewer*, 363 F. Supp. 2d at 1200 (also quoting *Daggett* for the same proposition); *Wilkinson v. Jones*, 876 F. Supp. 916, 927-28 (W.D. Ky. 1995) (distinguishing *Day* on its facts and holding that a non-participating candidate trigger did not chill speech "simply because it enables the speakers' adversaries to respond." In fact, "the trigger provision promotes more speech, not less.").

I agree with the courts that have rejected *Day*'s logic. The release of additional funds to a given candidate whom an individual opposes does not prevent the individual from speaking, nor does the release of additional funds to a candidate's opponent prevent the candidate from speaking. An individual or candidate may decide, as a strategic matter, not to speak as a result of the campaign financing system, but he is in no way prohibited from exercising his right to free speech. I also note that most of the comprehensive campaign financing statutes cited in the previous section contain triggering provisions that have either not been challenged, or have survived similar challenges. *E.g.*, Me. Rev. Stat. tit. 21-A § 1125(9); Ariz. Rev. Stat. § 16-952; N.C. Gen. Stat. § 163-278.67; Minn. Stat. § 10A.25 (Subd. 10); Mass. Gen. Laws ch. 55A § 11 (repealed); *see*

also Ky. Rev. Stat. Ann. § 121A.030(5)(a) (repealed).[67]

I hold that the triggers do not actually burden the exercise of political speech, and I thus need not consider whether the provisions are narrowly tailored. As such, defendants' motions are GRANTED with respect to counts two and three.

VI. Conclusion

Because plaintiffs have alleged a sufficient injury in this case, defendants' motion to dismiss counts two and three for lack of standing pursuant to Rule 12(b)(1) is **DENIED**.

In addition, treating defendants' motion to dismiss pursuant to Rule 12(b)(6) and their motion for judgment on the pleadings pursuant to Rule 12(c) as a single dispositive motion and applying the standard of review for Rule 12(b)(6), defendants' motions are **DENIED** with respect to count one, essentially because plaintiffs have adequately alleged that the CEP unfairly and

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[67] As defendants point out, the absence of triggers may have serious consequences for the participation rate. For example, the Vermont Act has no triggers. Howard Dean, then Democratic candidate for governor, initially accepted public funds under the Vermont Act for the 2000 gubernatorial race but withdrew from the program and returned the public funds after "citing concerns that his Republican opponent was receiving enormous amounts of money, much of it from out-of-state groups, and that the recent court ruling . . . left him no way to keep up." Frasco Public Funding Article, 92 CORNELL L. REV. at 787.

unnecessarily burdens their political opportunity, especially in one-party-dominant districts, and because the CEP is not narrowly tailored to achieve the compelling government interests at issue.

Finally, defendants' motions are **GRANTED**, however, with respect to counts two and three because the triggering provisions do not burden the exercise of any candidate's or any other individual's First Amendment rights. Those counts are hereby dismissed.

Collectively, defendants' motions **(docs. ## 68, 77)** are **GRANTED** in part and **DENIED** in part.

It is so ordered.

Dated at Bridgeport, Connecticut, this 20th day of March 2008.

/s/

Stefan R. Underhill
United States District Judge

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182

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IN THE

Supreme Court of the United States

GREEN PARTY OF CONNECTICUT, *et al.*,
Petitioners,

v.

ALFRED P. LENGE, *et al.*,
Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

BRIEF IN OPPOSITION FOR RESPONDENTS AUDREY BLONDIN, COMMON CAUSE OF CONNECTICUT, CONNECTICUT CITIZEN ACTION GROUP, AND TOM SEVIGNY

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QUESTION PRESENTED

Whether the Second Circuit erred in holding, based on its review of the factual record in this case, that petitioners had failed to prove that Connecticut's law establishing a public-financing system for state elected offices imposes an unfair or unnecessary burden on the electoral opportunities of minor parties.

RULE 29.6 STATEMENT

Connecticut Citizen Action Group is a nonprofit corporation that has no parent corporations and issues no stock. Common Cause of Connecticut is a part of Common Cause, a nonprofit corporation that has no parent corporations and issues no stock.

TABLE OF CONTENTS

Page

QUESTION PRESENTED i

RULE 29.6 STATEMENT ii

TABLE OF AUTHORITIES iv

INTRODUCTION 1

STATEMENT 4

A. The Citizens Election Program 4

B. The Factual Record 6

C. The Decision Below 9

REASONS FOR DENYING THE WRIT 12

I. THE SECOND CIRCUIT'S APPLICATION OF SETTLED PRINCIPLES TO HOLD THAT CONNECTICUT'S PUBLIC-FINANCE LAW DOES NOT UNFAIRLY DISADVANTAGE MINOR PARTIES DOES NOT MERIT REVIEW BY THIS COURT 12

II. THIS CASE DOES NOT PRESENT THE "TRIGGER" ISSUE THAT IS BEFORE THE COURT IN *MCCOMISH* AND *ARIZONA FREE ENTERPRISE CLUB* 21

III. PETITIONERS' ASSERTION THAT A "CONFLICT" WITH A 1977 DISTRICT COURT OPINION JUSTIFIES A GRANT OF CERTIORARI IS MERITLESS 25

IV. REVIEW OF THIS CASE IS NOT A MATTER OF NATIONAL IMPORTANCE 29

CONCLUSION 30

TABLE OF AUTHORITIES

CASES

Page(s)

Adarand Constructors, Inc. v. *Mineta*, 534 U.S. 103 (2001) 23

American Party of Texas v. *White*, 415 U.S. 767 (1974) 28

Bang v. *Chase*, 442 F. Supp. 758 (D. Minn. 1977) 3, 25, 26, 28

Buckley v. *Valeo*, 424 U.S. 1 (1976) ..... *passim*

Clingman v. *Beaver*, 544 U.S. 581 (2005) 23

Daggett v. *Commission on Governmental Ethics & Election Practices*, 205 F.3d 445 (1st Cir. 2000) 16

Davis v. *FEC*, 554 U.S. 724 (2008) 3, 11, 21

Jenness v. *Fortson*, 403 U.S. 431 (1971) 19

Libertarian Party of Indiana v. *Packard*, 741 F.2d 981 (7th Cir. 1984) 16

National Committee of Reform Party v. *Democratic National Committee*, 168 F.3d 360 (9th Cir. 1999) 16

North Carolina Right to Life Committee Fund for Independent Political Expenditures v. *Leake*, 524 F.3d 427 (4th Cir. 2008) 15

Rosenstiel v. *Rodriguez*, 101 F.3d 1544 (8th Cir. 1996) 16

Storer v. *Brown*, 415 U.S. 724 (1974) 13

Vote Choice, Inc. v. *DiStefano*, 4 F.3d 26 (1st Cir. 1993) 16

TABLE OF AUTHORITIES—Continued

Page(s)

STATUTES AND RULES

Conn. Gen. Stat. § 9-705 ..... 22, 23, 24, 25

S. Ct. R. 10 ..... 16, 27

IN THE

Supreme Court of the United States

No. 10-795

GREEN PARTY OF CONNECTICUT, *et al.*,
Petitioners,

v.

ALFRED P. LENGE, *et al.*,
Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

BRIEF IN OPPOSITION FOR RESPONDENTS AUDREY BLONDIN, COMMON CAUSE OF CONNECTICUT, CONNECTICUT CITIZEN ACTION GROUP, AND TOM SEVIGNY

INTRODUCTION

In this case, the court of appeals applied the principles laid down by this Court in *Buckley* v. *Valeo*, 424 U.S. 1, 90-103 (1976), and held that Connecticut's voluntary system of public financing of candidates for state offices does not place an unreasonable burden on the electoral prospects of minor-party and independent candidates. Petitioners do not contest the applicability of *Buckley*'s analysis or call into question the legiti-

macy of public financing generally. Instead, they ask this Court to review the Second Circuit's application of *Buckley* to the particular facts of this case, and to hold that the criteria established by Connecticut's legislature for allowing minor-party and independent candidates to qualify for funding are too stringent.

Strikingly, on the central issue in the case, petitioners identify no conflict among the lower courts, no unresolved issue of broad national importance, and no case in which any appellate court has found minor-party or independent candidates to be unduly burdened by any public-financing law. Instead, petitioners request that this Court wade into the fact-intensive issue of whether Connecticut's qualifying criteria are too onerous in comparison to the criteria upheld in *Buckley*. But this Court does not sit to review the lower courts' application of settled principles of law to particular facts.

Petitioners' claims that the Second Circuit erred are in any event unpersuasive. The Second Circuit carefully examined the record and reached the conclusion that the Connecticut statute's qualifying criteria do not present unreasonable barriers to minor-party success, and in fact have permitted a significant number of non-major-party candidates to qualify for funding. Petitioners might prefer standards that would permit even more candidates to qualify for funding, but that preference is not enough to demonstrate that the balance struck by Connecticut's legislature, and affirmed as reasonable by the court of appeals, is impermissible in light of the State's substantial interests in preventing waste of public funds on candidacies with no prospect of success and avoiding excessive political factionalism.

Moreover, contrary to petitioners' argument, the issues in this case have nothing in common with those upon which the Court granted certiorari in *McComish* v. *Bennett*, No. 10-239, and *Arizona Free Enterprise Club's Freedom PAC* v. *Bennett*, No. 10-238 ("the Arizona cases"). Those cases concern provisions in a public-finance law that give a participating candidate increased funding when opposition spending exceeds the initial public grant to the participating candidate. The issue the Arizona cases present is whether such provisions violate the opponents' speech rights in contravention of this Court's decision in *Davis* v. *FEC*, 554 U.S. 724 (2008).

The similar provisions that were once present in Connecticut's law no longer exist to present that issue here. The Second Circuit *struck down* the comparable provisions of Connecticut's law (*see* Pet. App. 142a-152a), and those provisions have now been repealed by Connecticut's legislature. Petitioners' assertion that the same issue is presented by a different provision of the Connecticut law, which provides reduced funding grants for participating candidates who are running unopposed or against only token opposition, is meritless. Indeed, petitioners did not even argue below that that provision was unlawful on the *Davis* rationale, and the Second Circuit did not decide any issue relating to its validity.

Equally untenable is petitioners' assertion that the decision below conflicts with the 33-year-old district court decision in *Bang* v. *Chase*, 442 F. Supp. 758 (D. Minn. 1977). The portion of *Bang* relied on by petitioners did not concern claimed unequal treatment of minor parties, but the validity of an idiosyncratic Minnesota-law provision controlling how public funds earmarked by taxpayers for particular political party accounts

would be divided among the party's candidates. Moreover, contrary to petitioners' suggestion, that part of *Bang*'s holding was not summarily affirmed by this Court. Rather, this Court's summary affirmance was limited to the part of the *Bang* decision that *upheld* most of the Minnesota public-finance law, because only the plaintiffs who challenged Minnesota's public-finance system perfected an appeal to this Court. The rulings that this Court affirmed in *Bang*—that Minnesota's public-finance law did not violate the First Amendment or the equal protection clause and did not infringe the rights of minority parties—are fully consistent with the decision below. There is, in short, no decisional conflict among the lower federal courts that would warrant exercise of this Court's jurisdiction.

STATEMENT

A. The Citizens Election Program

Connecticut's public campaign-finance system, called the Citizens Election Program (CEP), was enacted in 2005 as part of the State's Campaign Finance Reform Act (CFRA). The CEP, as well as other provisions of CFRA that are not at issue here, was a response to a succession of scandals involving officials at all levels of Connecticut's government. Allegations of corruption and favoritism toward contributors led to the resignation and eventual criminal conviction of former governor John Rowland. As the district court in this case recognized, the Rowland affair was "but one of the many corruption scandals involving elected officials in state and local government that helped earn the State the nickname 'Corrupticut.'" Pet. App. 184a.

The CEP addressed the pervasive problem of corruption and the appearance of corruption by attempting

to free candidates from exclusive reliance on private fundraising through the creation of a public-financing mechanism for elections to state offices. As relevant here, the CEP provides that candidates nominated for statewide or state legislative offices by major parties are eligible for public-funding grants, provided that they collect a specified amount of seed money in "qualifying contributions" of no more than $100. In return, candidates accepting public funding must abide by spending limits equal to the amount of the public funding plus the requisite qualifying contributions.

The CEP uses the definition of "major parties" that Connecticut has long used for other electoral purposes, under which a political party is a major party either if it had a candidate for governor who received at least 20% of the vote in the last election for that office, or if its registered voters make up at least 20% of Connecticut's electorate. Significantly, the 20% threshold does not necessarily limit major parties to Republicans and Democrats. Although the Democratic and Republican parties are now the only major parties in the State, former governor Lowell Weicker's "A Connecticut Party" satisfied the requirements for major-party status under Connecticut law based on the results of the 1990 elections, so all of its candidates would have qualified for funding as major-party candidates had the CEP been in existence in the 1992 and 1994 elections. *See* Pet. App. 134a.

Recognizing, however, that third parties will only rarely qualify as major parties based on the statewide 20% criteria, the CEP provides other means by which minor-party and independent candidates can qualify for funding for campaigns for specific offices. The CEP provides that a candidate can receive a grant of public funding if she (or a candidate of her party) received a

specified percentage of the vote for that office in the last election. Specifically, the CEP provides for a full funding grant if the candidate or party received 20% of the vote; a 2/3 funding grant for 15% of the vote; and a 1/3 grant for receiving 10% of the vote. Additionally, candidates and parties that cannot show a track record of support sufficient to satisfy the qualifying criteria based on electoral success may qualify for full, 2/3, or 1/3 grants by collecting petitions with the signatures of 20%, 15%, or 10% of eligible voters for their office.

Candidates eligible for funding based on these criteria must, like major-party candidates, raise specified levels of qualifying contributions. Candidates receiving only partial grants, however, are not limited to spending only those amounts, but may also raise and spend private contributions up to the full grant amount.

B. The Factual Record

Contrary to petitioners' assertions, the evidentiary record developed at the trial in this case does not show that the CEP's eligibility criteria unfairly burden the electoral opportunities of minor-party or independent candidates. Rather, the uncontradicted evidence demonstrates that minor-party candidates can meet, and have met, the CEP's eligibility standards, and that the prospects of minor-party candidates were not impaired by the advent of public campaign funding.

Specifically, eleven non-major-party candidates were eligible for public funding in the 2008 election based on election results in 2006 (Pet. App. 223a), and four others qualified for funding through petitioning

(EX-4491-4493).[1] Election results in 2008 made at least 15 non-major-party candidates eligible to qualify for funding in 2010, including five who reached the 20% threshold for full funding and four who qualified for 2/3 grants by receiving 15% of the vote. Pet. App. 227a. The 15 non-major-party candidates who received enough votes in 2008 to qualify for funding in 2010 represented well over 1/3 of the 40 non-major-party candidates who ran for state legislative office. Pet. App. 124a.

Moreover, the grants received by non-major-party candidates who qualified for funding—even partial funding—significantly exceeded the amounts such candidates are normally able to raise privately. *See* Pet. App. 174a-180a (most minor-party candidates raise less than $1000 per election). Minor-party or independent candidates who qualified for funding, therefore, received a significant benefit to their ability to campaign for office.

The evidence also showed that the overall performance of minor parties did not suffer with the advent of public funding in the 2008 election. On the contrary, minor-party candidates increased their overall share of the vote in 2008, increased their expenditures, and had levels of ballot access and candidate recruiting comparable to those in prior elections. *See* EX-4488, 4573 (vote percentage); EX-4483-4484, 4496-4497, 4574 (fundraising); EX-4565 (number of candidates).

The record also fails to support petitioners' theme that the CEP discriminates against non-major-party

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[1] "EX" refers to exhibit volumes filed in the court of appeals in lieu of including exhibits in the joint appendix.

candidates by treating them differently from supposedly equally hopeless major-party candidates in non-competitive districts. Petitioners assert that such major-party candidates are situated no differently than non-major-party candidates who are ineligible for full funding. However, Connecticut electoral results demonstrate that, while it is rare for a minor-party candidate to receive 20% of the vote in a legislative district (even when only one of the major parties fields a candidate), major-party candidates, when they choose to contest a district, very rarely receive less than 20% of the vote. *See* Pet. App. 219a-221a, 226a-227a; EX-927, 2554-2555. Major-party status is thus a highly reliable proxy for the ability of a candidate to meet the threshold measure of competitiveness that the State has deemed to justify full funding.

Similarly, the record does not support petitioners' hypotheses that so-called "windfall" funding levels for major-party candidates will lead them to contest more districts and further crowd out the voices of minor-party candidates. Unrebutted evidence demonstrated that this outcome had not in fact occurred in the 2008 elections: The number of districts contested by the major parties did not increase. Pet. App. 223a-227a. The reason is that, as the evidence at trial showed, major-party candidates generally do not decide whether to run for a particular office based on the availability of funding, but on the prospects for success. EX-844-845, 855-856.[2] In any event, petitioners did not show that

[2] The evidence also showed that minor-party candidacies are generally not driven by the availability of funds or the prospects of success (which are almost always small), but by ideological factors and the desire to increase their visibility. EX-871, 1952-1953, 1980-1982, 1994-1995, 2002-2004, 2152.

minor parties' chances of electoral success would suffer harm even if public funding led more major-party candidates to contest noncompetitive districts, because they presented no evidence that minor-party candidates themselves would have any realistic prospects of success in those districts. *See* Pet. App. 223a (minor-party candidates competing against a single major-party candidate received an average of 8.9% of the vote in 2006).

C. The Decision Below

Despite the factual record, the district court, erroneously applying strict scrutiny, struck down the CEP's eligibility criteria principally on the ground that the system was too generous to major-party candidates. The Second Circuit, focusing firmly on the standards set forth by this Court in *Buckley* and on the most pertinent facts established by the extensive record, reversed. The court held that the plaintiffs had not shown that the electoral prospects of minor parties were unfairly burdened by either the CEP's eligibility requirements for minor-party candidates or its provisions allowing funding of major-party candidates based on their parties' statewide levels of support.

Judge Cabranes' majority opinion thoroughly analyzed *Buckley*'s relevant holdings and concluded that the district court had erred in subjecting the CEP to strict scrutiny. The Court concluded that the statute could be sustained if it served sufficiently important state interests and did not unfairly burden the political opportunities of minor parties. Following *Buckley*, the court held that the CEP's public funding mechanism as a whole served important state interests in avoiding corruption or the appearance of corruption resulting from private campaign-financing practices.

The court also found that the CEP's eligibility criteria served important interests in not squandering public funds on hopeless candidacies. The court emphasized that *Buckley* had expressly held that eligibility for public funding could be conditioned on the showing of a threshold level of past support for a party or candidate, and that the determination of that threshold was in the first instance a matter of legislative judgment, subject to a judicial check only if it created an unfair burden on the prospects of minor parties and independent candidates. An important element of this determination, the court held, was whether a statute had the effect of reducing the strength of minor parties "'below that attained without any public financing.'" Pet. App. 121a (quoting *Buckley*, 424 U.S. at 98-99).

Examining the record, the court found that petitioners had failed to carry the burden of demonstrating such unfairness. The court emphasized that the record showed both that minor parties were not "shut out" from participation in the system (Pet. App. 124a), and that "minor-party candidates as a whole are ... just as strong—if not stronger—than they were before the CEP went into effect" (Pet. App. 126a). Although the court recognized that the result might be different in a future case with a different record, it held that, on the record before it, it could not find that the CEP unfairly burdened minor parties.

Similarly, the court held that the record did not support the conclusion that the CEP's provisions allowing major-party candidates to qualify for funding statewide based on their party's overall level of support burdened the rights of minor parties. The court found it merely speculative that minor parties would be adversely affected by funding of major-party candidates in supposedly noncompetitive districts. Indeed, the

court pointed out that "it is also possible that the statewide qualification criteria will increase the political opportunity of minor-party candidates, possibly in dramatic fashion," as would occur if a minor-party gubernatorial candidate were again to win 20% or more of the statewide vote. Pet. App. 135a.

In sum, the court held that the design of the CEP's eligibility criteria fell within the "permissible range" of legislative discretion under *Buckley*. Pet. App. 129a, 136a. In contrast, the court struck down the CEP's "trigger provisions," which allowed participating candidates to receive supplemental funds when nonparticipating opponents or independent groups made expenditures against them that exceeded their initial funding grants. According to the court, those provisions "penal[ized]" and "burden[ed]" the right to "'the exercise of the First Amendment right to use personal funds for campaign speech'" (Pet. App. 149a (quoting *Davis*, 554 U.S. at 740)), and could only be justified by a compelling state interest, which the court found lacking.

Shortly after the court's decision, Connecticut repealed the trigger provisions that the Second Circuit had invalidated, and they are thus no longer at issue in this case. What remains is petitioners' challenge to the effect of the CEP's eligibility and funding criteria on minor-party and independent candidates.

REASONS FOR DENYING THE WRIT

I. THE SECOND CIRCUIT'S APPLICATION OF SETTLED PRINCIPLES TO HOLD THAT CONNECTICUT'S PUBLIC-FINANCE LAW DOES NOT UNFAIRLY DISADVANTAGE MINOR PARTIES DOES NOT MERIT REVIEW BY THIS COURT

This Court established the principles governing the issues in this case in *Buckley*, and no subsequent decision either of this Court or of any other has called those principles into question. The Second Circuit carefully and correctly applied those settled principles to the particular features of Connecticut's public-finance law and the factual record of this case. Its holding does not conflict with decisions of this Court or any other appellate court, and does not merit exercise of this Court's discretionary certiorari jurisdiction.

The pertinent holdings of *Buckley* include the Court's recognition that voluntary public campaign-finance systems are fully compatible with the First Amendment because they represent efforts "not to abridge, restrict, or censor speech, but rather to use public money to facilitate and enlarge public discussion and participation in the electoral process, goals vital to a self-governing people." 424 U.S. 1, 92-93 (1976). The Court held that in assessing an equal protection challenge to a public-financing program based on the claim that it invidiously discriminates against candidates or parties who are ineligible for funding, it is inappropriate to apply the same degree of "exacting scrutiny" applicable to limits on ballot access because "public financing is generally less restrictive of access to the electoral process than the ballot-access regulations dealt with in prior cases." *Id.* at 95. As the Court explained, "the inability, if any, of minor-party candidates

to wage effective campaigns will derive not from lack of public funding but from their inability to raise private contributions." *Id.* at 94-95.

The Court thus held that a public-finance system that conditions eligibility on a candidate's or party's level of popular support is constitutional if it serves "sufficiently important governmental interests and has not unfairly or unnecessarily burdened the political opportunity of any party or candidate." 424 U.S. at 95-96. The Court recognized that public financing served the "significant governmental interest" of "eliminating the improper influence of large private contributions" and "relieving major-party ... candidates from the rigors of soliciting private contributions." *Id.* at 96. And it stated that the important public "interest in not funding hopeless candidacies with large sums of public money necessarily justifies the withholding of public assistance from candidates without significant public support." *Id.* (internal citation omitted). Requiring significant public support, the Court said, "also serves the important public interest against providing artificial incentives to 'splintered parties and unrestrained factionalism.'" *Id.* (quoting *Storer* v. *Brown*, 415 U.S. 724, 736 (1974)).

Ultimately, the Court held that these interests justified the denial of general-election public funding to minor-party and independent candidates who did not make the requisite showing of electoral success (which in the presidential system required meeting a threshold of 5% of the popular vote). Recognizing that the important interests served by limiting eligibility for funding were bounded by "constitutional restraints against inhibition of the present opportunity of minor parties to become major political entities if they obtain widespread support," 424 U.S. at 96, the Court found that

the law's challengers had "made no showing that the election funding plan disadvantages nonmajor parties by operating to reduce their strength below that attained without any public financing." *Id.* at 98-99.

The Second Circuit's decision represents a straightforward application of *Buckley* to the facts of this case. The court properly recognized that Connecticut's public-financing system served the same anticorruption interests as the federal presidential funding mechanism, and that the State had the same interests in not expending scarce funds on hopeless candidacies and not providing artificial incentives for factionalism by funding minor parties that lack substantial support.

Moreover, after a thorough examination of the record, the court concluded that petitioners had not carried their burden of showing that, in pursuing its significant interests, the State had unreasonably or unfairly burdened the electoral prospects of minor parties and independents or "'reduce[d] their strength below that attained without any public financing.'" Pet. App. 125a (quoting *Buckley*, 424 U.S. at 99). Based on the record before it, which included the complete results of elections predating and postdating the advent of public financing, the court found that minor-party candidates in fact had reasonable opportunities to qualify for funding under the law.

Specifically, as the court observed, significant numbers of minor-party candidates would be eligible for funding in the 2010 elections based on the 2008 election results (including several who met the 20% criterion for full funding). Moreover, those results failed to bear out petitioners' arguments that the law would dim the prospects of minor-party candidates by providing so-called "windfall" levels of funding for major-party

candidates and providing financial incentives for each major party to run candidates in the other party's "safe districts." The court observed that petitioners' predicted increase in the number of safe districts contested by major-party candidates had not occurred. Pet. App. 132a-133a. The court found, moreover, that minor-party candidates had fared better in the 2008 election, conducted under the public-finance regime, than under the former system. Pet. App. 131a. And the court pointed out that even if the law did have the effect of increasing the number of "safe districts" in which both major parties ran candidates, that would hardly damage the electoral prospects of minor parties, as a race in such a district "is, by definition, a race in which minor-party candidates have no realistic chance of winning." Pet. App. 140a. In sum, the Second Circuit's analysis of the record led it to conclude that Connecticut had acted reasonably in establishing the threshold levels of support required for funding and in providing funding for major-party candidates in all districts based on the level needed to run a competitive race.

Petitioners' contention that the Second Circuit's decision merits review does not rest on the claim that the court of appeals erred in basing its decision on *Buckley*'s analytical framework. Petitioners also fail to identify any conflict among the federal appellate courts, or state courts of last resort, concerning the legal principles to be applied to public campaign-finance statutes or the application of those principles to comparable statutory provisions. Indeed, they would be hard-pressed to do so because courts have uniformly upheld public-finance statutes, and no appellate court has accepted a claim that the qualification criteria of such a statute disadvantage minor parties. *See, e.g., North Carolina Right to Life Comm. Fund for Indep. Politi-*

cal Expenditures v. *Leake*, 524 F.3d 427 (4th Cir. 2008); *Daggett* v. *Commission on Governmental Ethics & Election Practices*, 205 F.3d 445 (1st Cir. 2000); *National Comm. of Reform Party* v. *Democratic Nat'l Comm.*, 168 F.3d 360 (9th Cir. 1999); *Rosenstiel* v. *Rodriguez*, 101 F.3d 1544 (8th Cir. 1996); *Vote Choice, Inc.* v. *DiStefano*, 4 F.3d 26 (1st Cir. 1993); *Libertarian Party of Ind.* v. *Packard*, 741 F.2d 981 (7th Cir. 1984).

Instead, petitioners argue principally that the Second Circuit misapplied the *Buckley* standard to the specific features of Connecticut's statute and the extensive factual record regarding its effects on minor parties. But it is axiomatic that "[a] petition for a writ of certiorari is rarely granted when the asserted error consists of erroneous factual findings or the misapplication of a properly stated rule of law." S. Ct. R. 10.

Petitioners' claims that the Second Circuit misapplied *Buckley* are in any event wholly unpersuasive. Focusing heavily on Connecticut's 10%-of-the-vote qualification threshold, petitioners argue that it burdens their rights because it is less permissive than the 5% threshold for qualification for presidential general-election funding upheld by the Court in *Buckley*.[3] *Buckley*, of course, nowhere suggested that 5% was a constitutional upper limit on the percentage of votes

[3] Petitioners also observe that the Connecticut statute is unlike the presidential public-finance provisions upheld in *Buckley* because it does not allow minor-party candidates to qualify retroactively for funding in an election based on their showing in that same election. But denying after-the-fact reimbursement based on election results is unlikely to significantly diminish third parties' chances of succeeding in that election, because such funding, by definition, is triggered only when the minor party achieves the required level of success without a public subsidy.

that could be required of minor-party or independent candidates in order to qualify for funding. Nor are petitioners able to cite any other authority supporting their position that 10% is too high.

Moreover, petitioners' contention that the Connecticut statute imposes a greater obstacle to the success of independent or minor-party candidates than the presidential public-funding system approved by *Buckley* is unpersuasive because it looks only at the percentage of the vote needed to qualify for funding and ignores other features of Connecticut's system that are actually *more* favorable to minor parties and independents. Under the federal system, attaining the 5% threshold qualifies a candidate only for funding proportionate to the average of the voting percentages received by the major parties. An independent or minor-party presidential candidate who qualified based on 5% of the vote would therefore most likely receive somewhere between 1/9 and 1/10 of the grant available to the major party candidates. A candidate who qualified based on receiving 10% of the vote would likely receive less than 1/4 the grant received by major-party candidates; one who qualified with 15% of the vote would most likely receive just over 1/3 as much as the major-party candidates; and a minor-party or independent who achieved 20% of the vote would get only about half as much as the major-party candidates.

By contrast, Connecticut, while setting a somewhat higher threshold for qualification, provides significantly larger grants to those who qualify. Minor-party candidates receive 1/3 grants based on the 10% threshold; the amount rises to 2/3 with a 15% level of support; and full funding requires only 20% support. In other words, Connecticut's legislature made the fiscally responsible judgment that it would not waste funds on minor-party

and independent candidates with minimal popular support, but would provide more meaningful levels of funding to candidates and parties with low to moderate levels of support. In fact, these grants far exceed the amounts typically raised by minor-party candidates on their own. Minor-party or independent candidates who attain these levels of support receive a greater opportunity to build support further and campaign more competitively in the next election. Nothing in *Buckley*, or anything else in this Court's jurisprudence, suggests that such a legislative judgment is unconstitutional. Indeed, *Buckley* emphasized that such questions of line-drawing are intrinsically matters of legislative judgment: "the choice of the percentage requirement that best accommodates the competing interests involved was for [the legislature] to make." 424 U.S. at 103.

Petitioners' other efforts to nitpick the Second Circuit's application of *Buckley* are no more convincing. Petitioners argue that major-party candidates running in the other major party's "safe districts" have no better prospects for success than minor-party candidates and should therefore not be able to qualify for funding based on their party's statewide electoral success. But this claim founders on the factual record, which shows that when major-party challengers contest a "safe district," they almost always achieve at least 20% of the vote, while minor-party candidates very rarely reach that level. Treating a major-party candidate—even one running in a supposedly non-competitive district—the same for funding eligibility purposes as a minor-party candidate would thus run afoul of *Buckley*'s admonition that "[s]ometimes the grossest discrimination can lie in treating things that are different as though they were

exactly alike." 424 U.S. at 97-98 (quoting *Jenness* v. *Fortson*, 403 U.S. 431, 441-442 (1971)).

Petitioners fare no better with their contention that the Connecticut law burdens them by providing major parties with competitive funding levels and thus supposedly encourages major parties to contest "safe districts" more often. Petitioners cite no authority for their novel contention that a candidate who is not eligible for funding suffers an injury of constitutional proportion if a publicly funded candidate receives more money than he or she otherwise would have raised. Nor do petitioners explain how increasing electoral competition among major parties would violate their rights, or why the Court should consider it a problem if the small fraction of votes a minor-party candidate may receive in a major party's "safe district" must now be contested with another major-party candidate. On the contrary, increasing electoral competition is a public good.

Most importantly, petitioners fail to overcome the factual record showing that, far from being crowded out by major-party candidates, minor-party candidates fared *better* after the establishment of public financing than they did before. Moreover, the evidence showed that financing is not the major determinant of whether a major-party candidate chooses to run in a "safe district" of the other major party and that the number of contested districts did not increase in 2008. In short, petitioners' claim that the availability of funding for major-party candidates in the other party's "safe districts" somehow unfairly burdens minor parties is, as the Second Circuit found, unconvincing.

Finally, venturing outside the record, petitioners complain that the Connecticut law "for all practical

purposes, excludes minor parties" because "not a single minor party candidate qualified for a grant in 2010." Pet. 19.[4] The results of a single election, however, cannot alter the fact that the levels of support set by the Connecticut law are ones that, historically, several minor-party candidates have shown the ability to meet, including surprisingly large numbers in the 2008 election. That is not to say that most minor-party candidates will meet them. After all, the very point of the eligibility criteria is to serve the State's important interest in not squandering funds on "hopeless candidacies," *Buckley*, 424 U.S. at 96—a term that, for better or for worse, describes most minor-party candidacies in our two-party system. Connecticut made a reasonable judgment in drawing the line between those candidacies that it is not fiscally responsible to support and those candidacies (including minor-party candidacies) for which it will provide support. That Connecticut's voters in 2010 did not find minor-party candidates appealing does not mean that Connecticut chose the wrong dividing line. And it certainly does not mean that petitioners' fact-bound challenge to the lower court's application of *Buckley* to the record before it deserves to be second-guessed by this Court.

Indeed, the opinion in *Buckley* pointed out that *no* minor-party presidential candidate would qualify for funding in 1976, but the Court found no infirmity in the presidential public funding scheme as a result. 424 U.S. at 99 n.135. *Buckley* flatly contradicts the suggestion

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[4] Presumably what petitioners mean is that no candidate qualified for a grant in 2012 based on the 2010 elections, as the evidence showed that several candidates were eligible for 2010 grants based on the 2008 results.

that the failure of minor-party candidates to qualify for funding in any one election means that a public-financing system unfairly limits electoral opportunities of minor parties.[5]

II. THIS CASE DOES NOT PRESENT THE "TRIGGER" ISSUE THAT IS BEFORE THE COURT IN *MCCOMISH* AND *ARIZONA FREE ENTERPRISE CLUB*

Implicitly recognizing that their fact-bound claim that Connecticut's law unduly burdens their electoral chances does not present an issue meeting this Court's ordinary standards for exercising its certiorari jurisdiction, petitioners attempt to persuade the Court that this case presents the same issue as the two Arizona public-finance cases in which the Court is hearing argument this Term, *McComish* and *Arizona Free Enterprise Club*. But the question presented in the Arizona cases is wholly distinct from any issues properly before the Court in this case.

At issue in the Arizona cases is whether the triggered matching-funds provision in Arizona's public-financing program unduly burdens the right of nonparticipating candidates and independent spenders to make unlimited campaign expenditures, in violation of the principles of this Court's decision in *Davis* v. *FEC*, 554 U.S. 724 (2008). Under the challenged provision, publicly funded candidates receive additional funding when privately funded opponents or hostile independent groups make expenditures exceeding the partici-

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[5] In addition, the Second Circuit itself left open the possibility that the issue could be revisited should a different factual record in a future case demonstrate the existence of a constitutional infirmity not evident on the record of this case.

pating candidate's basic funding grant. Connecticut's CEP, as originally enacted, included a similar provision, which petitioners challenged in this case.

The problem with petitioners' current argument is that the Second Circuit *agreed* with their claim that the Connecticut statute's trigger mechanism was unconstitutional under *Davis*. No one has challenged that ruling before this Court, nor could they—the Connecticut legislature repealed the trigger provision shortly after the court of appeals issued its decision, so the defendants and intervenors could not have sought this Court's review of the Second Circuit's invalidation of the trigger mechanism even if they had wanted to. In short, the opponents of the Connecticut statute have already prevailed on this issue both in court and in the legislative arena, and it is no longer part of the case.

Petitioners have now shifted their attack to another provision of the Connecticut law, Conn. Gen. Stat. § 9-705(j)(4). Section 9-705(j)(4) provides a reduced grant of public funds (60% of the standard grant) to participating candidates who face only token opposition.[6] Petitioners now argue that § 9-705(j)(4) is analogous enough to the trigger provisions struck down by the Second Circuit to require its invalidation under *Davis* as well. Thus, petitioners contend that even though the Second Circuit *accepted* their *Davis* argument, its decision upholding the remainder of the CEP presents the same claimed conflict with *Davis* that the Court is considering in the Arizona cases.

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[6] Section 9-705(j)(3), which petitioners do not seem to include in their challenge, provides an even more reduced grant (30% of the standard grant) to participating candidates who are unopposed.

Petitioners' argument has three major flaws. First, the issue they now raise was not actually decided by the Second Circuit. Second, the reason it was not decided was that *no one raised it.* And third, § 9-705(j)(4) creates a funding mechanism that is entirely different from Arizona's triggered matching funds, does not depend on expenditures by privately financed candidates or independent committees, and therefore does not implicate the same constitutional issues presented in the Arizona cases.

As to the first flaw in petitioners' argument, this Court has repeatedly stated that it "ordinarily do[es] not decide in the first instance issues not decided below." *Adarand Constructors, Inc.* v. *Mineta*, 534 U.S. 103, 109 (2001) (internal quotation marks omitted); *see Clingman* v. *Beaver*, 544 U.S. 581, 598 (2005). There is no doubt that the Second Circuit did not rule on the constitutionality of § 9-705(j)(4) under *Davis*. The provision was mentioned only once by the Second Circuit, in the "background" section of the court's opinion. Nothing in the court's discussion of the case suggests that it intended to issue a ruling of any kind on the constitutionality of that specific provision, still less a ruling on whether the court's invalidation of the triggered matching-fund provisions under *Davis* should apply to this provision as well.

Second, the Second Circuit did not decide the issue because petitioners did not argue it. Given the seriousness with which the Second Circuit took the *Davis*-based challenge to the CEP's triggered matching-funds provisions, it undoubtedly would have considered the application of *Davis* to § 9-705(j)(4) had it understood petitioners to assert that that provision was unconstitutional under *Davis*. But nothing in petitioners' briefs alerted the court to this possibility. Petitioners briefly

mentioned § 9-705(j)(4)'s existence in two footnotes to their statement of facts (2d Cir. Appellees' Br. 12 n.5, 17 n.6), and discussed it in passing again in one paragraph of their argument. But in the 15 pages of their brief devoted to developing their *Davis*-based argument against the constitutionality of the CEP's triggered matching-funds provisions, petitioners never mentioned § 9-705(j)(4) at all. *Id.* at 99-115. Having failed to make the argument in their brief below, petitioners are in no position now to fault the Second Circuit for not addressing the issue, let alone to claim that the court of appeals implicitly decided the point against them. A purely imaginary decision on a point not raised cannot justify either granting the petition or holding it pending the outcome in the Arizona cases.

In any event, petitioners' contention that § 9-705(j)(4) poses the same constitutional issues as the Arizona triggered matching-funds provisions is meritless. The constitutionality of provisions triggering matching funds based on opposition spending is not the same question as the constitutionality of providing *reduced* funding to candidates in essentially uncontested races. Section 9-705(j)(4) does not provide additional funding for participating candidates in danger of being outspent by nonparticipating opponents. Rather, together with § 9-705(j)(3), it protects the State's limited financial resources by providing reduced funding for a candidate who is unopposed or faces only token opposition. It avoids squandering public funds on such uncompetitive races by using the absence of a major-party opponent or of a minor-party opponent who has raised more than a *de minimis* amount of campaign funds as a measure of the absence of a genuinely contested race. It does not even arguably "penalize" a candidate's opponents for engaging in unlimited spend-

ing outside of the public-finance system, as it does not make eligibility for full funding dependent on such spending by opponents, but principally on whether a candidate's opponents raised the amount of funds needed to qualify for *public* financing.

In short, petitioners' effort to paint their petition as one involving the same issues as the Arizona cases is a sham. The "trigger" question those cases involve—whatever its proper resolution—is now out of this case because petitioners *prevailed* on it below. The statutory provision petitioners now seize on to create the illusion that there is a common issue was never ruled on or challenged on this basis below. Even if it had been, the Millionaire's Amendment that was at issue in *Davis* and the triggered matching-funds provisions at stake in the Arizona cases raise issues of fact and law that are distinct from those that would arise in an assessment of the constitutionality of § 9-705(j)(4).

III. Petitioners' Assertion That A "Conflict" With A 1977 District Court Opinion Justifies A Grant Of Certiorari Is Meritless

Petitioners' contention that this case merits a grant of certiorari because of a conflict with the district court decision in *Bang* v. *Chase*, 442 F. Supp. 758 (D. Minn. 1977), is as far-fetched as their claim that this case presents the same issues as the Arizona cases.

For starters, on the point for which the petitioners cite it, *Bang* is nothing more than a district court decision. To be sure, a part of what *Bang* decided was summarily affirmed by this Court, and the Second Circuit therefore devoted considerable attention to whether it was bound by the district court's holding striking down a portion of Minnesota's public-finance law. But petitioners fail to acknowledge (and the Sec-

ond Circuit was apparently unaware) that this Court's summary decision in *Bang* in fact only affirmed the district court's holding that the Minnesota public-finance statute was, for the most part, *constitutional*. That holding (which did not include the part of the *Bang* opinion on which petitioners rely) was the only issue before this Court on direct appeal from the district court's decision.

Bang involved a broad challenge to Minnesota's voluntary public-financing system as well as other provisions of Minnesota's campaign-finance laws, including mandatory expenditure limitations that were obviously invalid under the then-recent decision of this Court in *Buckley*. The district court struck down the expenditure limitations but generally upheld the public-financing system. The court held that public financing served important state interests in preventing actual corruption and the appearance of corruption and that the law's challengers had not "adequately demonstrated that the Act's public-financing provisions will unfairly or unnecessarily burden the political opportunity of minority party candidates." 442 F. Supp. at 767. The court struck down only one aspect of the public-finance system, relating to the allocation of funding among participating candidates. *Id.* at 768.

The *plaintiffs* in *Bang* then filed a jurisdictional statement challenging the district court's holding that the public-finance system was constitutional. No. 77-1450, Jurisdictional Statement (U.S. filed Apr. 11, 1978). Meanwhile, Minnesota's legislature repealed the allocation system that the district court had held unconstitutional, and the defendants in the case accordingly did not file a jurisdictional statement challenging that holding. No. 77-1450, Motion to Dismiss or Affirm 4-5 & n.4 (U.S. filed May 11, 1978). Thus, the issues ap-

pealed to this Court related solely to the district court's decision *upholding* Minnesota's public-finance law, and the Court's summary affirmance represented only a judgment that the district court had correctly held the State's voluntary public-finance system *constitutional*. The district court's holding as to the allocation of funds, on which petitioners so heavily rely, was not before this Court on appeal, and this Court's summary affirmance therefore adds no precedential weight to that holding.[7]

Thus, even taken at face value, petitioners' reliance on *Bang* is nothing more than a claim of conflict between a recent decision of a federal court of appeals and a decades-old decision of a single district court. Such a claim of conflict is not generally a sufficient basis for the exercise of this Court's certiorari jurisdiction. *See* S. Ct. R. 10. Indeed, that petitioners' principal claim of decisional conflict is based on just one district court decision—and one that can hardly be called recent—only underscores the absence of any divergent rulings among the lower courts that call for resolution by this Court.

Moreover, the claim of conflict is not even accurate, as the issue decided in *Bang* was remote from those implicated in this case. Unlike Connecticut's CEP, the statute at issue in *Bang* permitted taxpayers to designate a portion of their taxes to support candidates of a particular party. Funds designated for each party were then distributed uniformly to that party's legislative

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[7] Because the reasoning of Judge Kearse's partial dissent rested largely on the erroneous premise that the part of *Bang* striking down the allocation provision was a binding precedent because this Court had summarily affirmed it, the dissent's analysis lacks persuasive force.

candidates in districts statewide. Thus, whichever of the two *major* parties (Independent Republican and Democratic Farmer-Labor) received more designated funds statewide would get a funding advantage over the other major party in *every* legislative district. It was that systematic disparity between the funding for the two major parties that led the district court to strike down that portion of the legislation on the ground that it unfairly discriminated against whichever party lacked a statewide plurality of support (even though any "discrimination" was the result of the individual funding preferences expressed by taxpayers statewide). *See* 442 F. Supp. at 768.

This unique allocation feature of Minnesota's former law has no counterpart in Connecticut's CEP. Unlike the former Minnesota statute, Connecticut's public-finance law does not create disparities in funding of major-party candidates based on the parties' relative popularity at the statewide level; rather, it provides equal funding to all major-party candidates. Moreover, Connecticut's law, unlike the law in *Bang*, makes funding available to non-major-party candidates based on their support in particular districts. The unfairness that troubled the district court in *Bang* is not present under the Connecticut law.

Nor is it the case, as petitioners suggest, that *Bang* stands for some broader principle that it is always unfair to use statewide levels of party support to distinguish among parties when applying election laws at the individual district level. Certainly nothing in the three short paragraphs that *Bang* devoted to the allocation issue suggests that it was purporting to adopt such a general rule. Indeed, had it done so it would have placed itself squarely in conflict with this Court's then-recent decision in *American Party of Texas* v. *White*,

415 U.S. 767 (1974), which upheld a Texas law providing for automatic general-election ballot access statewide, as well as statewide funding for primary elections, based upon a party's vote total in the most recent gubernatorial election. Under *Buckley*, criteria determining eligibility for public funding are subject to less stringent scrutiny than are ballot-access laws. Thus, *a fortiori*, *White*'s approval of the use of statewide vote totals to determine major-party status for purposes of automatic ballot access at the individual district level refutes the existence of a per se rule against use of statewide vote totals to determine a party's eligibility for public funding. The assertion that the context-specific ruling in *Bang* is in conflict with the Second Circuit's approval of Connecticut's very different statutory scheme is meritless.

IV. Review Of This Case Is Not A Matter Of National Importance

Petitioners acknowledge that the specific eligibility criteria that they challenge in Connecticut's statute differ from those of other state public campaign-finance laws. They make no pretense of pointing to any broad disagreement among the lower courts about the standard to apply to claims that public-finance laws burden minor parties, nor do they identify any specific conflict over how that standard has been applied (aside from their inaccurate claim of a conflict between the decision below and *Bang*). Yet they nonetheless assert that review of the Second Circuit's application of *Buckley* to a distinctive statutory scheme and an extensive factual record is somehow a matter of national importance.

Petitioners have it backwards. Although public-finance statutes (and public-finance litigation) have existed since the 1970s, legislatures on both the state and

federal levels are continuing to experiment with different approaches to public-finance legislation, and it remains to be seen whether public financing of political campaigns will expand significantly, and, if it does, what form that expansion will take. Litigation in this area has generally involved application of the lenient *Buckley* standard to the specific features of each statute and the particular ways in which each jurisdiction has adapted public financing to suit its own needs.

There is little reason for this Court to step into this evolving area to address claims that a particular legislature drew the lines in the wrong place in exercising its broad and undoubted authority to limit scarce public funding to candidates with realistic prospects of competing. Absent a real conflict among the lower courts requiring this Court's attention or a substantially more compelling claim that a statute has genuinely burdened the prospects of minor parties, this Court should not expend its resources on a case that presents nothing more than a question of the fact-specific application of the general principles laid out by *Buckley* a generation ago.

CONCLUSION

For the foregoing reasons, the petition for a writ of certiorari should be denied.

Respectfully submitted.

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In The
Supreme Court of the United States

GREEN PARTY OF CONNECTICUT, ET AL.,

Petitioners,

v.

ALBERT P. LENGE, ET AL.,

Respondents.

On Petition For Writ Of Certiorari To The United States Court Of Appeals For The Second Circuit

BRIEF OF RESPONDENTS IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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COUNTER-STATEMENT OF QUESTIONS PRESENTED FOR REVIEW

There is no dispute that states are permitted to require a showing of a significant level of public support for a party or a candidate before awarding public funding. *Buckley v. Valeo*, 424 U.S. 1, 96 (1976). This showing of support protects the public from funding hopeless, fly-by-night candidates, prevents the artificial splintering of political parties and prevents unrestrained factionalism. *Id.* Petitioners ask this Court to establish a uniform constitutional rule applicable to all states and localities that may enact public financing programs requiring them to treat minor party and independent candidates on identical terms with major party candidates in the awarding of public funding. *Buckley* rejected this exact argument. Rather, the rule announced in *Buckley* is that a legislature may properly condition the awarding of funds in a public financing program on a candidate's or party's preliminary showing of significant public support, *id.* at 96, and that the obvious differences in kind between major party and minor party candidates need not be ignored by the legislature when crafting a public financing program. *Id.* at 97-98. The only constitutional constraint on a legislature when advancing its significant governmental interests of protecting the public fisc and avoiding artificial splintering and unrestrained factionalism is the need to avoid unnecessary and unfair burdens on the

COUNTER-STATEMENT OF QUESTIONS PRESENTED FOR REVIEW—Continued

political opportunity of any party or candidate. *Id.* at 94, and petitioners failed to demonstrate such a burden.

Thus, the issue properly presented in this case is whether the Court of Appeals correctly applied the settled rule of *Buckley* to Connecticut's unique public financing system, and to the facts of the petitioners' claims particularly, which the Court of Appeals determined to be insufficiently developed.

TABLE OF CONTENTS

	Page
COUNTER-STATEMENT OF QUESTIONS PRESENTED FOR REVIEW	i
TABLE OF CONTENTS	iii
TABLE OF AUTHORITIES	iv
COUNTER-STATEMENT OF THE CASE	1
I. CONNECTICUT'S CITIZENS' ELECTION PROGRAM	3
II. OPERATION OF THE CEP	4
A. Eligibility Criteria	4
B. Distribution Formulae	6
C. Primary Election Funding	8
III. THE PROCEEDINGS BELOW	9
REASONS FOR DENYING THE WRIT	10
I. THERE IS NO CIRCUIT SPLIT	14
II. THE ISSUES PRESENTED IN THE PETITION ARE UNIQUE TO THE CEP, AND ANY DECISION BY THIS COURT WILL HAVE NO FAR REACHING OR EVEN DISCERNIBLE IMPACT NATIONWIDE	16
III. THE COURT OF APPEALS APPLIED THE CORRECT LEGAL STANDARD FROM *BUCKLEY* AND APPLIED IT CORRECTLY TO AN INSUFFICIENT RECORD	20
CONCLUSION	31

TABLE OF AUTHORITIES

Page

CASES

Bang v. Chase, 442 F. Supp. 758 (D. Minn. 1977), *summarily aff'd sub nom., Bang v. Noreen*, 436 U.S. 941 (1978) 11, 14, 15, 16

Buckley v. Valeo, 424 U.S. 1 (1976) ..... *passim*

Bush v. Vera, 517 U.S. 952 (1996) 14

Crawford v. Marion County Election Bd., 553 U.S. 181 (2008) 13

Jenness v. Fortson, 403 U.S. 431 (1971) 22

New State Ice Co. v. Liebmann, 285 U.S. 262 (1932) 17

Timmons v. Twin Cities Area New Party, 520 U.S. 351 (1997) 19

Washington State Grange v. Washington Republican Party, 552 U.S. 442 (2008) 13

Williams v. Rhodes, 393 U.S. 23 (1968) 25

STATUTES

Conn. Gen. Stat. § 9-372(5) 4, 24

Conn. Gen. Stat. § 9-372(6) 24

Conn. Gen. Stat. § 9-400 8

Conn. Gen. Stat. § 9-415 8

Conn. Gen. Stat. § 9-451 8

Conn. Gen. Stat. § 9-452 8

Conn. Gen. Stat. § 9-453b 5

TABLE OF AUTHORITIES—Continued

Page

Conn. Gen. Stat. § 9-453i 5
Conn. Gen. Stat. § 9-702(a) 4, 8
Conn. Gen. Stat. § 9-702(c) 6, 7
Conn. Gen. Stat. §§ 9-704(a)-(e) 5, 6
Conn. Gen. Stat. §§ 9-705(a)-(f) ..... *passim*
Conn. Gen. Stat. § 9-705(g) 4, 5, 7
Conn. Gen. Stat. § 9-705(j) 6, 7, 27
Conn. Gen. Stat. § 9-713 9
Conn. Gen. Stat. § 9-714 9
Conn. Gen. Stat. § 9-717 27

RULES

S. Ct. Rule 10 ..... 12, 20

PUBLIC ACTS

Public Act 05-5 (October 2005 Spec. Sess.) 1
Public Act 10-1 (July 2010 Spec. Sess.) 6, 9

CONSTITUTIONAL PROVISIONS

U.S. Const. Amend. I ..... *passim*
U.S. Const. Amend. XIV ..... *passim*

COUNTER-STATEMENT OF THE CASE

This petition arises out of a challenge to the constitutionality of Connecticut's Citizens' Election Program ("CEP") brought by two minor parties and a minor party candidate. The CEP was enacted by the Connecticut General Assembly in 2005 as part of the Comprehensive Campaign Finance Reform Act ("CFRA"), Public Act 05-5 (October 2005 Spec. Sess.). The Second Circuit Court of Appeals rejected petitioners' challenge to the CEP's eligibility criteria for minor party and petitioning candidates because it found petitioners had failed to establish evidence of harm or discrimination against minor parties or their candidates attributable to the operation of the CEP. The features of CEP, and its relation to Connecticut's overall electoral scheme, which favors nascent minor party candidates in ways that far exceed constitutional requirements, necessarily confine any decision by this Court regarding the CEP to unique facts of Connecticut's program. The Court of Appeals applied the proper legal standard from *Buckley v. Valeo*, 424 U.S. 1 (1976) to the facts in the record, and the lack thereof, and the decision below does not conflict with any decision by another Court of Appeals. In applying *Buckley*'s principles, the Court of Appeals correctly concluded that on the record on appeal petitioners had not met their burden to establish cognizable harm to their rights protected under the First Amendment or Fourteenth Amendment. It properly declined to accept petitioners' arguments of speculative future harm to

minor parties arising out of the operation of the CEP and noted the inconclusive nature of the predictions made by petitioners regarding future harm. The Court of Appeals reasonably held that the record from the one election cycle in which the CEP operated, 2008, foretold a possible "boon" for minor party candidates and not necessarily a "burden" because minor party candidates qualified for CEP funding in 2008 and obtained vote totals that established minor party eligibility for full or partial CEP grants in 2010. Moreover, the CEP grants awarded minor party and petitioning candidates in 2008 far exceeded the amounts of private fundraising historically attained by minor party and unaffiliated candidates thereby resulting in more, not less, minor party speech and political opportunity. The Court of Appeals found petitioners' conjecture regarding harm, which *Buckley* instructs cannot be a basis for invalidating a public financing program, not only inappropriate but inconclusive because the results from the one election cycle provided early indications that the CEP actually enhanced the political opportunity of minor party candidates in Connecticut. The Court of Appeals cautioned that although another case and a future record may demonstrate a constitutionally cognizable harm to minor party candidates, the record below did not and, therefore, invalidation of the CEP was improper under *Buckley*. For these reasons, as set forth more fully below, this Court should deny petitioners' petition.

I. CONNECTICUT'S CITIZENS' ELECTION PROGRAM

In 2005, Connecticut enacted the CFRA, in response to a series of highly publicized and debilitating political scandals that resulted in the criminal prosecution of several prominent political figures—most notably the conviction and imprisonment of Governor John Rowland. The CFRA was enacted to combat political corruption that had taken root and flourished in the highest levels of government in Connecticut and to restore public confidence in the integrity of government and the democratic process. Petitioners' Appendix ("Pet. App.") 86a-87a, 183a-188a.

Following the resignation and conviction of Governor Rowland, Governor M. Jodi Rell and legislative leaders embarked on an eighteen month process of deliberating and negotiating various reform proposals. After differing factions failed to reach a compromise during the 2005 regular legislative session, Governor Rell convened a special reform working group to continue public discussion and deliberation of reform proposals after the formal adjournment of the General Assembly. The Campaign Finance Reform Working Group reported its findings and proposals to the Governor in September 2005; and in October 2005, Governor Rell convened a Special Session of the General Assembly for the sole purpose of enacting election reform. After caucusing for over a month in Special Session, the General

Assembly enacted the CFRA on December 1, 2005 and Governor Rell signed it into law six days later.

A central feature of the legislative compromise that led to the enactment of the CFRA was the CEP, a voluntary system of public campaign financing for candidates for statewide and legislative offices. *All candidates* for statewide or legislative office in Connecticut have an opportunity to participate in the CEP, irrespective of their political affiliation or prior involvement in electoral politics. All candidates wishing to participate in the CEP must first demonstrate a certain threshold level of public support for their candidacy before receiving CEP funds, and can make this showing of public support through alternative eligibility criteria.

II. OPERATION OF THE CEP

A. Eligibility Criteria

Candidates become eligible for CEP funding in the general election in any of three ways. First, they may win the nomination of a major party, defined as a party whose candidate in the last gubernatorial election received at least 20% of the vote or as a party with at least 20% of party-enrolled voters in the state. Conn. Gen. Stat. § 9-372(5); § 9-702(a). Second, they may win the nomination of a political party that has attained minor party status for the relevant office and whose candidate in the previous election for that office garnered at least 10% of the total vote. Conn. Gen. Stat. § 9-705(c)(1) and (g)(1). Third, if unable to

satisfy either of the first two methods of qualifying, candidates may also demonstrate sufficient public support by submitting nominating petition signatures in a number equal to at least 10% of the total votes cast in the last election for the relevant office. *Id.* §§ 9-705(c)(2) and (g)(2). Candidates have over seven months to gather the petition signatures required to obtain the 1% for ballot access or the 10% required for CEP eligibility. See Conn. Gen. Stat. § 9-453b (authorizing issuance of nominating petitions on the first business day of the election year); see also Conn. Gen. Stat. § 9-453i (requiring submission of petition signatures no later than the 90th day before the November general election).

In addition, all candidates must gather qualifying contributions, in increments of no more than $100 per individual, in total amounts varying by the level of office sought to become eligible for CEP funds. Conn. Gen. Stat. §§ 9-704(a)-(e). All candidates are required to gather the same number and amount of qualifying contributions for each respective office. *Id.* A candidate for governor must gather $250,000 in qualifying contributions, $225,000 of which must come from residents of the state, *id.* § 9-704(a)(1); a candidate for other statewide offices must gather $75,000 in qualifying contributions, $67,500 of which must come from residents, *id.* § 9-704(a)(2); a candidate for state senate must gather $15,000 in qualifying contributions, including contributions from 300 residents of a municipality located at least in part in the district the candidate seeks to represent,

id. § 9-704(a)(3); a candidate for state representative must gather $5,000 in qualifying contributions, including 150 from local residents, *id.* § 9-704(a)(4). Candidates may begin collecting the required qualifying contributions *at any time*. *Id.* § 9-702(c); §§ 9-704(a)-(e).

B. Distribution Formulae

All candidates, irrespective of party affiliation, who meet the relevant eligibility and qualifying contributions criteria and qualify for the ballot may receive a grant for the general election. In the 2008 election cycle, the full general-election grant amounts were: for governor, $3 million;[1] for attorney general, state comptroller, secretary of the state, and state treasurer, $750,000; for state senator, $85,000; and for state representative, $25,000. See Conn. Gen. Stat. §§ 9-705(a)-(f). Pet. App. 92a. General election grants may, however, be reduced for candidates running in uncontested elections. Conn. Gen. Stat. §§ 9-705(j)(3)-(4).

Thus, participating major party candidates are eligible to receive full grants when they face a major party opponent or a non-major party opponent who qualifies for CEP funding. Conn. Gen. Stat. §§ 9-705(a)-(f); *id.* § 9-705(j). A participating major

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[1] The grant amount for participating candidates for governor was increased from $3 million to $6 million in 2010. Public Act 10-1, § 3 (July 2010 Spec. Sess.).

party candidate who is unopposed in the general election receives only a 30% grant. *Id.* § 9-705(j)(3). A participating major party candidate facing only non-major party opposition will receive a reduced 60% grant amount provided that the non-major party opponent has not raised the qualifying contributions amount for the relevant office. *Id.* § 9-705(j)(4).

Candidates who have not won the nomination of a major party may become eligible to receive either a full general election grant, or a two-thirds or one-third general-election grant either by demonstrating they are the nominee of a minor party whose candidate in the previous election for the relevant office received at least 20%, 15%, or 10% of the total vote, or by submitting a number of petition signatures equal to at least 20%, 15%, or 10% of the prior vote for the relevant office. Conn. Gen. Stat. §§ 9-705(c)(1)-(2) and (g)(1)-(2). Qualifying minor party or independent candidates who receive less than a full general election grant may raise private funds up to the amount of the full grant for the relevant office. *Id.* § 9-702(c). The participating non-major party candidates, who receive less than a full general election grant, also may become eligible to receive post-election funding to cover deficits, if they receive a percentage of the vote that exceeds the percentage of their grant amount. *Id.* §§ 9-705(c)(3) and (g)(3).

C. Primary Election Funding

Major parties are statutorily required to hold primary elections under certain mandatory procedures and a major party candidate may only participate in a primary after demonstrating a certain level of public support. Conn. Gen. Stat. § 9-400, § 9-415. Major party candidates participating in a primary election may become eligible for CEP funding for their primary. See *id.* § 9-702(a), §§ 9-705(a)(1), (b)(1), (e)(1), (f)(1), § 9-415. All primary grant funds that are either unspent or were expended for general election purposes during the primary are deducted from an eligible candidate's general-election grant. *Id.* § 9-705(j)(2).

In contrast, minor parties are not required by statute to select their candidates through primary elections and historically have not done so. Conn. Gen. Stat. § 9-702(a), § 9-451, § 9-452; see also Pet. App. 92a. While minor parties are not statutorily prohibited from selecting their candidates through primary elections, no minor party currently provides for the nomination of its candidates through a primary in its bylaws. Pet. App. 92a. A minor party that chose to nominate its candidates through a primary, as opposed to a nominating convention, could qualify for a primary grant under the CEP. Pet. App. 92a.

III. THE PROCEEDINGS BELOW

Petitioners brought a five count complaint challenging various provisions of the CFRA. In Count I, the only count relevant to this petition,[2] petitioners alleged the CEP's eligibility requirements and grant distribution formulae violate the rights of minor parties and minor party candidates protected under the First Amendment and Fourteenth Amendment to the United States Constitution. U.S. Const. Amend. I (free speech clause), Amend. XIV (equal protection clause).

The district court ruled in favor of petitioners on Count I and, on appeal, the Second Circuit Court of Appeals reversed the district court's ruling. The Second Circuit applied the legal standards set forth in *Buckley v. Valeo*, 424 U.S. 1 (1976) and concluded that on the record before it, comprised of data from only the 2008 elections, the first election cycle in which the CEP operated, petitioners had not met their burden under *Buckley* to demonstrate discriminatory "practical effects" attributable to the CEP that could be said to unfairly or unnecessarily

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[2] The Connecticut General Assembly subsequently repealed the provisions challenged in Counts II and III. See Conn. Gen. Stat. § 9-713 and § 9-714; Public Act 10-1, § 15 (July 2010 Spec. Sess.). The General Assembly amended the provisions challenged in Count IV, Public Act 10-1, §§ 9-10 (July 2010 Spec. Sess.), and petitioners abandoned Count V in their appeal. Pet. App. 98a.

burden petitioners' or any other party's continued availability of political opportunity.

The Court of Appeals carefully observed *Buckley*'s guiding principles applicable to public financing programs generally: that public financing programs expand First Amendment values, *Buckley*, 424 U.S. at 92-93, and are "not restrictive of voters' rights and less restrictive of candidates' [rights]" and therefore do not impose a "direct" burden on First Amendment rights. *Id.* at 94; Pet. App. 107a-108a.

The Court of Appeals also determined that *Buckley* does not require that public financing programs be subject to "exacting scrutiny." Rather, *Buckley* distinguished between public financing programs and "direct burdens" on speech, such as ballot access restrictions that are subject to "exacting scrutiny." While *Buckley* instructs that the CEP need not be subjected to "exacting scrutiny," the Court of Appeals nonetheless analyzed the program under that standard—requiring a "substantial relationship" between the CEP and a "sufficiently important governmental interest"—and found it constitutional, thereby obviating the need for further consideration under a lesser standard. Pet. App. 111a.

REASONS FOR DENYING THE WRIT

There are no compelling reasons to grant certiorari in this case. First, there is no circuit split on the question of whether states may enact public

financing programs that treat minor party and petitioning candidates differently in regard to eligibility criteria to ensure those candidates demonstrate a threshold level of public support. Petitioners attempt to fashion a circuit split from the thin cloth of a thirty-three year old district court decision, *Bang v. Chase*, 442 F. Supp. 758 (D. Minn. 1977), *summarily aff'd sub nom., Bang v. Noreen*, 436 U.S. 941 (1978). Petitioners' reliance on *Bang* demonstrates two critical points: the relative infrequency with which public financing programs are enacted and challenged and the difficulty of making meaningful comparisons between public financing programs, because each program is invariably only one component of a unique electoral scheme. Indeed, *Bang* is easily distinguishable from the facts of this case because the program there operated differently and was part of an overall electoral scheme that treated minor parties differently than Connecticut does.

Petitioners have also failed to proffer any issue of national importance that could justify review by this Court on this meager record. The CEP is not only unique to Connecticut, but is only one of three statewide public campaign financing programs operating nationwide. Moreover, petitioners have not established that states across the nation, all of which are laboring under unprecedented budget constraints, are poised to adopt, or even consider adopting, public financing programs at this time. This case presents questions that are confined to the unique

circumstances existing in Connecticut and a decision by this Court will be unlikely to have any far reaching or discernible impact nationwide.

Finally, petitioners acknowledge the Court of Appeals used the correct legal standard under *Buckley* in its decision, and merely object to the application of that standard to the facts in this case. Such a complaint is not a proper basis upon which the petition may be granted. See S. Ct. Rule 10.

Even if it were a proper ground upon which to grant a writ of certiorari, petitioners' claim of misapplication of the law to the facts has no merit. Petitioners fundamentally misunderstand their evidentiary burden under *Buckley* to produce and prove facts that demonstrate an unfair or unnecessary burden to their "political opportunity" that results in a reduction in their strength. Under *Buckley*, petitioners were required to demonstrate that the CEP reduced or diminished their strength below levels attained prior to the enactment of the CEP. In the absence of concrete evidence, petitioners have relied upon speculative and disjointed claims of future harms caused by the singular or combined operation of various provisions of the CEP. All of the claims on petitioners' "laundry list" of future harms are derivative; as each is premised on an award of a benefit to others that is denied to them.

What this petition lacks, and what the Court of Appeals appropriately found fatal to petitioners' claims in Count I, are concrete and measurable

"practical effects" of actual harm to minor party candidates fairly attributable to the CEP. Petitioners could not demonstrate any diminution of their already somewhat minimal strength that could be causally linked to the enactment of the CEP in 2008. While petitioners' claim that the Court of Appeals misapplied *Buckley* to the facts of their case, it was the absence of a factual record of harm the Court of Appeals found problematic. Indeed, the Court of Appeals candidly acknowledged that it was initially receptive to petitioners' allegations of harm arising from the CEP's eligibility criteria and that its "intuition" at the outset had been that petitioners could make a showing of unconstitutional burden. A review of the record below altered this impression and the Court of Appeals properly declined to strike down landmark reform legislation on the basis of its "intuition" or petitioners' speculative claims of harm. Pet. App. 124a.

Instead, the court below undertook a careful and faithful application of the legal standard derived from *Buckley* applicable to public financing. Moreover, its decision is also in accord with this Court's decisions disfavoring facial challenges of election statutes. See *Washington State Grange v. Washington Republican Party*, 552 U.S. 442, 450 (2008) (eschewing "premature interpretations of [election] statutes in areas where their constitutional application might be cloudy"); *Crawford v. Marion County Election Bd.*, 553 U.S. 181, 200 (2008) (parties seeking to

"invalidate [an election] statute in all its applications, [. . .] bear a heavy burden of persuasion.").

Not only have petitioners failed to demonstrate the Court of Appeals applied an incorrect legal standard or misapplied the correct standard, they also cannot establish any of the other bases for granting a petition such as a need for this Court to resolve a conflict among lower courts or a national need for the court to address the issue.

I. THERE IS NO CIRCUIT SPLIT

Petitioners do not argue that there is a split among the circuit courts of appeals regarding the issue in this case because there is *none*. Indeed, due to the uniqueness of the CEP—among just three operative statewide public financing programs that exist today—no other circuit court has even applied *Buckley* to a public financing system.

Out of necessity, petitioners resort to constructing a "conflict" from a thirty-three year old district court decision in *Bang v. Chase*, 442 Supp. 758 (D. Minn. 1977), *summarily aff'd sub nom., Bang v. Noreen*, 436 U.S. 941 (1978).[3] Even if such a conflict were sufficient to warrant this Court's review—which it

[3] The Court of Appeals properly concluded that such a summary affirmance was of little precedential value beyond that case and should not be construed as an endorsement of the lower court's reasoning. Pet. App. 103a, citing, *Bush v. Vera*, 517 U.S. 952, 966 (1996) (Kennedy, J., concurring).

clearly is not under this Court's precedent—*Bang* can be distinguished from this case with ease and therefore presents no conflict at all.[4]

Specifically, petitioners' reliance on the conclusion in *Bang* that the use of a statewide proxy impermissibly discriminates against minor party candidates is inapt. The *Bang* Court found objectionable the automatic awards of public funds to primary winners in legislative districts based *exclusively* on a statewide formula, without any requirement that the candidate show a level of support in his or her particular district. *Bang*, 442 F. Supp. at 767-768.

The CEP operates completely differently because it applies to statewide races where the use of a statewide proxy is clearly appropriate, and it requires legislative candidates to demonstrate local support for their campaigns by gathering qualifying contributions. The CEP does *not* award funds to legislative or statewide candidates, based *solely on* a statewide proxy. Rather, legislative candidates wishing to receive a CEP grant must establish localized support *both* by garnering a major party nomination *and* by gathering the necessary qualifying contributions from residents *in their own districts*.

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[4] The Court of Appeals observed that the CEP is substantially different from the program that was under review in *Bang* and noted the CEP appeared to be "far more generous to minor party candidates." Pet. App. 104a, n. 4.

This showing of local support required in the CEP is precisely the element the court found lacking in *Bang*. Consequently, the Court of Appeals' decision and *Bang* are not in conflict and, even if they were, a single district court decision from more than thirty years ago would not provide a sufficient conflict at this point to justify granting the petition.

II. THE ISSUES PRESENTED IN THE PETITION ARE UNIQUE TO THE CEP, AND ANY DECISION BY THIS COURT WILL HAVE NO FAR REACHING OR EVEN DISCERNIBLE IMPACT NATIONWIDE

Petitioners contend incorrectly that this case raises issues of national importance, but fail to articulate coherently how a decision of this Court construing the unique features of Connecticut's electoral program, on a skeletal record, will have a far reaching impact or provide guidance to other states on the question of constitutional tolerances for public financing programs. Petitioners also fail to make a compelling case for the purported need for "uniformity" of qualifying criteria in public financing programs. Not unlike petitioners' claims in their case in chief, this claimed need for national uniformity is founded on speculation and conjecture because petitioners do not adequately demonstrate that other states are poised to enact public financing programs. Petitioners correctly acknowledge in their petition that the CEP is distinctly unique among the state public financing programs that have been adopted

thus far. Petition ("Pet.") 26. From a practical perspective, therefore, any decision by this Court necessarily will be limited to Connecticut and the specific requirements of the CEP.

More fundamentally, however, petitioners' flawed rationale as to why this Court's intervention is necessary actually counsels *against* granting the petition. Petitioners essentially claim that, because the CEP goes further in some respects than other public financing programs that exist today, this Court's intervention is immediately necessary in order to impose "uniformity" in this developing area of electoral reform. This is precisely what this Court should *not* do.

States have been described as the great "laboratories" of our federal system and must be free to experiment by enacting legislation aimed at improving the lives of their citizens without risking or binding other states and their citizens. See *New State Ice Co. v. Liebmann*, 285 U.S. 262, 311 (1932) (Brandeis, J., dissenting). This certainly is true in the area of public campaign financing, in which each state must balance several widely divergent, and often competing, interests in order to develop a program that fits its own specific needs and limitations. *Buckley*, 424 U.S. at 103. In light of the inherent complexities that any electoral reform of such magnitude entails, states must be given the time and opportunity to develop programs that satisfy all parties involved and at the same time fit within constitutional boundaries. Because of the

small number of states that have adopted full public financing programs thus far, however, there simply is not yet a sufficient body of experience—either practical or legal—from which to determine the range of programs that satisfy both of these criteria. It would therefore be premature for this Court to step in and impose a "uniform" rule that draws a permanent line between those programs that impermissibly burden minor parties' political opportunity and those that do not. Indeed, this case is a particularly inappropriate vehicle by which to undertake such a task given that the true impact of the CEP itself is, at this early juncture, still largely unknown and speculative.[5] In fact, it is possible—and, to many observers, probable—that the CEP will be a "boon," (Pet. App. 135a), to minor parties, who, unlike the petitioners here, choose to organize themselves and put effort into qualifying for public financing.

In addition, petitioners' facile comparisons to programs in Maine and Arizona, as well as the presidential public financing system at issue in *Buckley*, in support of their call for uniformity are incomplete and therefore should be accorded no weight. Petitioners allude to the purported party

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[5] Moreover, the "immediacy" with which petitioners claim that uniformity is needed is by no means clear. There is no indication that any other state intends to adopt a program like the CEP in the near future, much less the proverbial flood of states that petitioners claim are sure to follow Connecticut's lead.

neutrality of the systems operated by Maine and Arizona but fail to elucidate whether those states achieve their important governmental interests of protecting the public fisc and avoiding artificial splintering and unrestrained factionalism in their public financing systems by erecting barriers to the presence of minor parties on their ballot in the first instance. For example, petitioners fail to clarify whether Maine and Arizona allow any party or candidate to get on the ballot by gathering petitions equal to 1% of the prior vote total for that election, or whether those states allow minor parties to maintain their minor party ballot position for the next election upon a mere 1% vote showing *for that office* without requiring a demonstration of broader statewide support; or whether the comparator states foster the growth and public support for minor parties by permitting fusion voting or cross endorsements of major party candidates. See *Timmons v. Twin Cities Area New Party*, 520 U.S. 351, 362-363 (1997). (upholding Minnesota's ban on fusion voting and cross endorsements by minor parties).

Petitioners also neglect to acknowledge the serious obstacles to minor party participation present in the presidential system considered in *Buckley*, such as: the categorical shut-out of minor party candidates in the first year they run a presidential candidate, *Buckley*, 424 U.S. at 88; the categorical unavailability of full funding for minor party candidates, *id.* at 88; the complete exclusion of independent candidates. *Id.* at 87, n. 118; and the

absence of a petitioning alternative. *Id.* at 100. Upon closer scrutiny petitioners' claim of the need for and desirability of uniformity among public financing systems based on these comparisons appears not only illusory but ill-advised. Indeed, other minor parties might object to the uniformity these petitioners seek to impose.

This case therefore does not present any issues of national significance that require this Court's resolution at this time. Given the lack of experience with public campaign finance programs nationwide—and with the operation of the CEP in particular—this Court should reject petitioners' premature request to impose "uniformity" in this still developing area of the law.

III. THE COURT OF APPEALS APPLIED THE CORRECT LEGAL STANDARD FROM *BUCKLEY* AND APPLIED IT CORRECTLY TO AN INSUFFICIENT RECORD

Petitioners do not dispute that the Court of Appeals correctly applied the legal standard from *Buckley* but simply disagree with the outcome derived from the application of the standard to the facts of this case. Petitioners' claim of error arising from a misapplication of the correct legal standard to a set of facts is not a proper ground to grant their petition. See S. Ct. Rule 10 (misapplication of properly stated rule of law not valid basis for granting petition).

Assuming *arguendo*, that petitioners' disagreement with the Court of Appeals' application of the correct legal standard from *Buckley* could provide an appropriate basis for granting their petition, however, the Court of Appeals did not misapply *Buckley* in this case. Rather, the court below scrupulously followed the language of *Buckley* and applied four recognizable principles from *Buckley* in determining whether the CEP unfairly or unnecessarily burdened the political opportunity of minor parties or minor party candidates: (1) states can establish thresholds that require a showing of significant public support before providing public funds; (2) legislative decisions regarding the required public support are entitled to deference; (3) a plaintiff bears the burden of establishing that the program operates to reduce its strength to a level below that attained without the program; and (4) a court should not engage in speculation and should require a plaintiff to adduce tangible evidence of practical effects about the operation of the program. Pet. App. 122a.

First Principle: States Can Establish Thresholds That Require A Showing Of Significant Public Support Before Providing Public Funds.

Neither *Buckley* nor any other decision of this Court has held that a state must treat minor parties and minor party candidates as if they were major party candidates for purposes of awarding public money in order to be constitutional under *Buckley*. Rather, states may, consistent with the First and

Fourteenth Amendments, require that nascent parties and unaffiliated candidates make a showing of significant public support before dispensing public funds to them. In *Buckley*, this Court validated the legitimacy of the legislature's recognition of the "obvious difference in kind between the needs and potentials of a political party with historically established broad support, on the one hand, and a new or small political organization on the other." *Buckley*, 424 U.S. at 97, quoting *Jenness v. Fortson*, 403 U.S. 431, 441 (1971). Neither *Buckley* nor any other decision of this Court require legislative blindness to the obvious multiple differences between major and minor party candidates. To the contrary, *Buckley* stated that "[t]he Constitution does not require [the legislature] to treat all declared candidates the same for public financing purposes." *Buckley*, 424 U.S. at 97. Thus, states may condition an award of public funding on "some preliminary showing of a significant modicum of support." *Id.* at 96, quoting *Jenness*, 403 U.S. at 442. In fact, *Buckley* specifically noted that "[t]hird parties have been completely incapable of matching the major parties' ability to raise money and win elections," and therefore expressly approved of legislatures treating minor party candidates differently, stating that they are "justified in providing both major parties full funding and all other parties only a percentage of the major-party entitlement." *Id.* at 98.

The Court of Appeals in this case recognized that a state may require a demonstration of significant

public support established in *Buckley* and found the CEP's eligibility criteria for minor party candidates based upon prior vote totals was reasonable and consistent with *Buckley*. The Court of Appeals properly rejected petitioners' claim that the CEP's requirement of threshold demonstration of public support of at least 10% in a prior election before awarding public funds discriminates against minor parties by making it "difficult" and "nearly impossible" for them to qualify for CEP funds. Pet. 10; Pet. App. 128a, n. 14. The Court of Appeals rejected this claim of "near impossibility" because the facts contradicted it: viable minor party candidates were automatically eligible for CEP grants in 2008 and 2010 after only one election cycle under the new program. In fact, the 2008 elections demonstrated that, if anything, minor party candidates generally fared *better* under the CEP than they had in the preceding election cycle, although one of the named plaintiffs may have performed worse in 2008.

Second Principle: Legislative Decisions Regarding The Level Of Required Public Support Are Entitled To Deference.

The Court of Appeals properly deferred to the General Assembly's decisions regarding the appropriate levels of public support required before dispensing public funds to candidates. The legislature reasonably used a longstanding statewide 20% prior vote requirement as a benchmark for any party's candidates to be eligible for a full CEP grant. Major

party candidates must, by definition, belong to a political party that yielded 20% of the vote in the last gubernatorial election or had, at the last gubernatorial election, a number of enrolled members equal to the 20% of the total number of enrolled members of all parties in the state. Conn. Gen. Stat. § 9-372(5). In contrast, a minor party candidate is a candidate that belongs to a party that yielded 1% of the vote in the last election for the office for which the candidate is running. Conn. Gen. Stat. § 9-372(6). *All* candidates must collect the appropriate number of qualifying contributions in order to be awarded a grant. Again, the Court of Appeals found petitioners' claims of burden on their political opportunity by the application of the 20% proxy belied by the facts in the record. Minor party candidates—many of whom ran in so-called "safe" districts, which petitioners claim to be a particular locus of their alleged harm—in fact fared better in 2008 under the CEP.

Even if the evidence supported a conclusion that minor party candidates performed worse in "safe" districts under the CEP or faced stiffer competition than they did before enactment of the CEP—which it does not—these facts alone would not render the CEP an unfair or unnecessary burden on petitioners. Petitioners' claim of a special entitlement under *Buckley* to maintenance of the *status quo ante* in "safe" districts is a misreading of *Buckley*. Even if legislative enactments could ensure the preservation of the status quo in the few districts where petitioners lay claim to prior success, this result is

neither required under *Buckley* nor desirable. Enhancement of democratic value through greater competition and voter choice in "safe" districts furthers the fluidity of our political system, a value recognized in *Buckley* and *Williams v. Rhodes,* 393 U.S. 23 (1968). Indeed, the Court of Appeals observed that increased competition among major party candidates could inure to the benefit of minor party candidates because of the dynamic and fluid nature of our political system. Pet. App. 133a.

The Court of Appeals also found legislative decisions regarding the distribution formulae entitled to deference because, although the legislature "painted with a broad brush," (Pet. App. 141a), when it pegged the CEP grant amount formulae for legislative districts to the historically most competitive districts, it did so for easily justifiable reasons. The alternative of capping grant amounts at recent historic spending in a particular district was fraught with peril because it might not account for new factors that could unexpectedly enhance competition in the district on short notice, such as an open seat or other political changes. The legislature's decisions about the appropriate grant amounts required to ensure participating candidates had sufficient resources to spread their message and respond to competitors and the amounts required to encourage participation in the CEP were entitled to deference.

The court below emphasized that, although the grant levels are somewhat higher than the amounts historically raised in many "safe" districts, this does

not indicate that candidates *could not* have raised such funds if they had sought to. The court also acknowledged that it would not be feasible for the General Assembly to tailor the grant amounts on a district-by-district basis and still encourage candidates to participate in the program. Adhering to the actual legal standard from *Buckley*, rather than petitioners' unsupported speculations, the court therefore again concluded that there simply was no evidence that the higher grant amounts have operated to reduce the strength of minor parties below that attained before the CEP was enacted. Pet. App. 141a-142a. The Court of Appeals appropriately accorded deference to legislative judgments, particularly where petitioners were unable to make out any record of harm.

Third Principle: A Plaintiff Bears The Burden Of Establishing That The Program Operates To Reduce Its Strength To A Level Below That Attained Without The Program.

The Court of Appeals concluded that there is insufficient evidence in the record to conclude that the CEP's eligibility criteria or distribution formulae reduced the strength of minor-party candidates below that attained without any public financing. Pet. App. 129a, 131a, 141a; *Buckley*, 424 U.S. at 99. Petitioners adduced no evidence that demonstrated that either their strength or that of any minor party or unaffiliated candidate had been reduced to a level below that attained prior to the enactment of the CEP. In fact, the early indications from just one

election cycle were that the CEP benefited many minor party candidates and could potentially be a "boon" for minor party and unaffiliated candidates in Connecticut. Pet. App. 135a.

Moreover, petitioners do not claim that the CEP limits their *own* ability to participate in the political process, associate with voters, engage in political speech, access the ballot, spread their political message or receive contributions from supporters. Instead, petitioners' claim of harm is that another group of candidates are provided benefits denied them.[6] This derivative claim of harm is not a burden on the right of political opportunity under any of this

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[6] Paradoxically, petitioners emphasize throughout their petition, (Pet. 7, 16, 28), the one provision of the CEP that operates to give major party candidates *less* of a benefit than they would otherwise be entitled to under the CEP. Petitioners contend that the operation of Conn. Gen. Stat. § 9-705(j)(4), which gives major party candidates a lower grant and therefore a less generous benefit, *harms* them. This position is perplexing in light of the fact that the smaller grant amounts for major party candidates provided for under this provision will often apply in the "safe" districts petitioners argue they frequently run in. Moreover, the result of invalidating that provision as petitioners seek, would be that major party candidates would receive larger CEP grants at the outset of the election, since that provision is severable under Conn. Gen. Stat. § 9-717 and could be excised. Petitioners' claim that this provision "punishes" them for the exercise of their First Amendment rights, (Pet. 30), is specious. Indeed, they could just as easily argue that they are chilled from even seeking ballot access in a district in the first instance since their mere presence on the ballot makes a participating candidate eligible for more funds. Conn. Gen. Stat. §§ 9-705(j)(3)-(4).

Court's precedents, and was rejected in *Buckley*. *Buckley,* 424 U.S. at 94-99 n. 128 (denial of enhanced political opportunity through public funding does not limit minor parties' ability to participate in the political process, and "the inability, if any, of minor-party candidates to wage effective campaigns will derive not from lack of public funding but from their inability to raise private contributions").

Fourth Principle: A Court Should Not Engage In Speculation And Should Require A Plaintiff To Adduce Tangible Evidence Of Practical Effects About The Operation Of The Program Before Considering The Program's Constitutionality.

The Court of Appeals found the petitioners had not satisfied their burden under *Buckley* to demonstrate "practical effects" of a reduction of their strength as a result of the operation of the CEP. Petitioners failed to demonstrate any "practical effects" of an unfair or unnecessary burden or reduction of their strength attributable to the CEP, not only because they had not demonstrated the CEP harmed them, but also because the evidence in the record pointed to a potential "boon," (Pet. App. 135a), to viable minor party candidates who could potentially qualify for CEP funding in significant numbers. The Court of Appeals observed that many of petitioners' *speculations* about how the CEP will operate to harm them in "uncompetitive" or "safe" districts were far from certain. In particular, it noted

that major parties were reluctant to field candidates in their opponent's "safe" districts even during the 2008 elections, debunking petitioners' claim that the 20% statewide qualification proxy "inevitably" would increase major party competition to their detriment.

The Court of Appeals also noted that there is no reason to believe that an increase in major party competition (i.e., two major party candidates competing within a district) necessarily would result in a decrease in minor party strength in that district because many minor parties are based on a core group of supporters who will not vote for another party. To the contrary, the court reasoned that the addition of another major party candidate could in fact *increase* minor party strength by forcing the existing major party candidate to move to the center, thereby causing voters on the extreme end of the ideological spectrum to vote for a minor party candidate instead. Moreover, the court stressed that the CEP's 20% statewide proxy could in fact provide a *windfall* to minor parties in the event that they are able to organize around a candidate for governor who can reach the 20% threshold, as such a showing would automatically guarantee a full grant to all of that party's candidates *for every office in the next election*. Such a result would be nothing short of transformative for a minor party. Pet. App. 134a.

In its discussion of each of petitioners' claims, the Court of Appeals emphasized the fact that the record in this case is limited to evidence of just one election cycle in which the CEP had a chance to operate.

Thus, although it acknowledged that a more complete picture of the CEP's impact may arise in another case and on another record, the court concluded that the evidence in this case simply does not support petitioners' claims. Although it is plausible that petitioners' speculations may prove to be accurate in the future, it is equally, if not more, plausible that the exact opposite will happen and minor parties (whether the petitioners or other minor parties) will in fact blossom and become far *stronger* under the CEP than they previously had been. It is precisely for this reason—the impossibility of predicting a public financing program's true impact on any one group's strength in one election cycle—that this Court has required petitioners to produce the evidence that the Court of Appeals found to be distinctly lacking in this case. *Buckley*, 424 U.S. at 97 n. 131, 98-99, 101.

CONCLUSION

For all of the reasons set forth herein, the petition for a writ of certiorari should be denied.

Respectfully submitted,

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GREEN PARTY OF CONNECTICUT, ET AL.,

Petitioners,

—v.—

ALBERT P. LENGE, ET AL.,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

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TABLE OF CONTENTS

TABLE OF AUTHORITIES ii

I. *BUCKLEY* DID NOT CONSIDER THE BURDEN ON MINOR PARTIES CREATED BY A FUNDING SYSTEM THAT *INCREASES* THE SPEECH AND ELECTORAL OPPORTUNITIES OF MAJOR PARTY CANDIDATES 1

II. THE BURDEN ON MINOR PARTIES ATTRIBUTABLE TO THE CEP'S FUNDING SCHEME IS FULLY SUPPORTED BY THE RECORD 5

III. RESPONDENTS HAVE FAILED TO JUSTIFY THE CEP'S NUMEROUS DISCRIMINATORY PROVISIONS 7

IV. THE MINOR PARTY TRIGGER PROVISION IS PROPERLY BEFORE THE COURT 10

CONCLUSION 12

TABLE OF AUTHORITIES

Cases

Bang v. Chase,
442 F. Supp 758 (D. Minn. 1977), *aff'd Bang v. Noreen*, 436 U.S. 941 (1978) 3, 4

Buckley v. Valeo, 424 U.S. 1 (1976) ..... *passim*

Davis v. Federal Election Com'n,
128 S Ct. 2759 (2008) 5

First Nat'l Bank of Boston v. Bellotti,
435 U.S. 765 (1978) 5

McComish v. Bennett,
611 F.3d 510 (9th Cir. 2010), *cert. granted*,
__ S.Ct. ___ (Nov. 29, 2010) (No. 10-239) .. 10, 11, 12

New State Ice Co. v. Liebmann,
285 U.S. 262 (1932) 7

I. *BUCKLEY* DID NOT CONSIDER THE BURDEN ON MINOR PARTIES CREATED BY A FUNDING SYSTEM THAT *INCREASES* THE SPEECH AND ELECTORAL OPPORTUNITIES OF MAJOR PARTY CANDIDATES

The opposition briefs filed by the respondents fail to acknowledge the inherent inequality of a public financing system that for all practical purposes increases the speech and electoral opportunities of major party candidates only. In a State characterized by stagnant major party competition, the Citizens' Election Program ("CEP") attempts to increase competition by providing weak major party candidates with the resources and incentive to compete on a level playing field in historically safe legislative districts where they have previously enjoyed little public support, so long as they meet the contribution requirements. App. 273a.-276a, 300a-301a. Minor party candidates who meet the same contribution requirements are arbitrarily denied that opportunity -- unless they also satisfy the prior vote total or petitioning requirements. These provisions work in tandem with the contribution requirements to unreasonably limit minor party participation. In the 2010 cycle not a single minor party or independent candidate received a grant.[1]

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[1] Petitioners acknowledge that there will always be some minor party candidates who are theoretically eligible for funding based on a prior vote total that crosses the 10% threshold. The number will vary from cycle-to cycle and will depend on how many run in single party districts since minor party candidates will rarely qualify in districts that are contested by both major

The respondents do not challenge these facts, but they give them relatively short shrift. Instead, respondents argue that the decision below represents a straightforward application of the principles articulated in *Buckley v. Valeo*, 424 U.S. 1 (1976). Respondents argue that *Buckley* categorically rejects the argument that minor parties are prejudiced under a funding scheme that requires them to satisfy different and more difficult qualifying criteria than their major party opponents. But, *Buckley* did not consider the burden on minor parties by a funding system that lavishes "windfall" amounts of money on "hopeless" major party candidates because that issue was not presented by the presidential financing system. App. 170a, 261a-269a, 300a, 320a, n. 70. To the extent that *Buckley* sheds light on that question, it is helpful to petitioners because the *Buckley* Court clearly understood the presidential financing system as a substitute for marketplace forces. 424 U.S. at 96, n.129. Connecticut's system does not replicate the marketplace; it dramatically skews it in favor of major party candidates. App. 256a-260a.

The CEP provides historically underfunded major party candidates with the resources to run full throttle campaigns—while denying the same benefit to independent and minor party candidates The fact

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parties App 277a-278a However, their performance says little about their relative strength or their ability to raise the contributions necessary to qualify for public financing The relative strength of a minor party candidate who receives 9 9% of the vote in an election contested by both major parties is presumptively much greater. Yet, such candidates are categorically ineligible for funding even though they might have sufficient local or statewide support to raise the necessary qualifying contributions

that the program features a small window of opportunity for minor parties does not alter the fact that the major parties will primarily benefit under the CEP because of the ease with which candidates can qualify for funding that in most cases far exceeds the amount they could raise privately. App 273a-276a. The CEP's qualifying and grant distribution terms are discriminatory not solely because they treat major and minor parties differently, but because the program's terms have the effect of "slant[ing] the political playing field." App. 261a-262a.

Major party candidates are given a permanent statutory preference under the qualifying provisions of the CEP, based solely on the candidate's major party status. The use of one statewide election as a proxy for the actual support of every major party candidate in every district will unjustifiably inflate the strength of historically weak major party candidates by making full public financing available to them, even if they have no chance of winning or could not raise an equivalent amount of money privately. App. 260a-261a, 266a, 317a-318a. *See also,* App.299a-300a ("In a district where a Democrat beats his or her Republican opponent 75% to 25%, no one would argue that the Republican candidate's vote total represented a realistic chance of winning or even a showing of significant strength."). Under the Connecticut system, a party with a statewide plurality can "unfairly disadvantage its opponents [including minor party opponents] in those districts where it enjoys little support." *Bang*

v. Chase, 442 F. Supp. 758 (D. Minn. 1977), *aff'd Bang v. Noreen*, 436 U.S. 941 (1978).[2]

The respondents brush these concerns aside and reject the argument that minor parties are presumed to be disadvantaged under a funding system that "subsidizes" major party candidates -- even if it means providing candidates more money than they could have raised themselves. That is a dubious proposition under *Buckley* and later cases, which do not allow campaign finance laws to be used to give one side of the debate or one group of preferred speakers an unfair advantage. In *Buckley*, this Court expressly noted that the presidential campaign financing scheme "does not enhance the major parties' ability to campaign; it substitutes public funding for what the parties would raise privately and additionally imposes an expenditure limit." 424 U.S. at 96, n.129. Here, by contrast, the evidence shows that the CEP funneled large amounts

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[2] "Upon reviewing the jurisdictional statement in *Bang*, petitioners agree with respondents that the allocation formula was not before the Court when it summarily affirmed the three-judge court decision in that case. Respondents' effort to distinguish away the conflict between this case and *Bang* are unpersuasive, however. The respondents' main point is that Connecticut does not rely solely on a statewide proxy, but also requires candidates to raise qualifying contributions to demonstrate their district wide support. That argument would be more persuasive if minor party candidates in Connecticut could qualify for funding on the same terms as major party candidates. They must satisfy the same contribution standard, but are only eligible for funding if they meet the prior vote total or petitioning requirement, and even then they may only qualify for partial funding. A party's "major party status" is therefore the critical discriminatory factor in the same way that it was in *Bang*.

of money to major party candidates in 2008, thus dramatically enhancing their relative ability to reach the electorate beyond their past ability to raise contributions and campaign. App. 321a-322a. *See also Davis v. Federal Election Com'n*, 128 S.Ct. 2759, 2772 (2008) (finding that increasing the fundraising advantage of one group of candidates imposes a "substantial burden" on the First Amendment rights of candidates denied the advantage); *First Nat'l Bank of Boston v. Bellotti*, 435 U.S. 765, 784-85 (1978) (noting that "the First Amendment is plainly offended" when the legislature attempts to give one group "an advantage in expressing its views to the people"). Most minor party candidates are denied this advantage, even if they raise the requisite number of qualifying contributions.

II. THE BURDEN ON MINOR PARTIES ATTRIBUTABLE TO THE CEP'S FUNDING SCHEME IS FULLY SUPPORTED BY THE RECORD

By subsidizing historically weak major party candidates, the statute exacts a heavy corresponding price on minor parties. They are inevitably worse off as a result because they must now navigate a political field that is both more competitive and expensive. In the future, that will make it increasingly difficult for minor party candidates to replicate anywhere near the same level of success they enjoyed in pre-CEP election cycles, and ultimately more difficult to qualify for public funding, further reinforcing their minor party status. App 267a, 278a. In an effort to discount the burden on minor party candidates, respondents argue that the operation of the CEP has not resulted in any

dilution of the absolute political strength of minor parties by focusing on whether minor party candidates raised less money, ran fewer candidates, faced increased competition or received fewer votes in 2008 following implementation of the CEP. The district court rejected most of the evidence introduced on these issues because it contained numerous inaccuracies. App. 225a, n.28. More importantly, the district court found that respondents' arguments were not credible when considered in the context of the statute's acknowledged legislative purpose of encouraging major party competition and the statute's "readily apparent mechanics." App. 224a., n.27. As the district court recognized, an exclusive focus on ballot access, fundraising results, and vote outcomes tells only one side of the story. The other side of the story is that the CEP has provided significant public funding since 2008 to weak major party candidates in historically single party districts that is unavailable in most instances to minor party candidates. App. 321a-322a. As a result, the district court found, the relative strength of major party candidates has been dramatically increased and the relative strength of minor party candidates has been dramatically diminished. *Ibid.* *See also,* App. 261a-269a (summarizing data).

Agreeing with respondents, the Second Circuit dismissed the district court's finding as "speculative." But, as the district court aptly explained, "[c]onsidering Connecticut's electoral history as a party dominant state," the effects of a public financing system -- which provides "windfall grants" to major party candidates based solely on their affiliation with the party, and which operates

primarily for the benefit of major party candidates – "cannot legitimately be characterized as speculative." App. 320a, n.70). Although the Second Circuit left open the possibility to a later challenge based on a different factual record, the Court's analysis strongly implies that in order for petitioners to succeed they must show that they have been driven from the field. The standard adopted by the Second Circuit leads to the paradoxical result that petitioners can only prevail on their claim by losing at the polls. And, by treating even minimal electoral success as fatal to petitioners' legal claims, the Second Circuit's standard fails to admit the possibility that minor parties might make even greater gains if the major parties were not being subsidized, or if minor parties could participate in the CEP on terms that were not so overtly discriminatory.

III. RESPONDENTS HAVE FAILED TO JUSTIFY THE CEP'S NUMEROUS DISCRIMINATORY PROVISIONS

The respondents do not seriously challenge the fact that Connecticut has the most stringent qualification requirements in the nation. Instead, they cite the familiar description of the states as laboratories in our federal system. *New State Ice Co. v. Liebmann*, 285 U.S. 262, 311 (1932) (Brandeis, J., dissenting). That familiar metaphor, however, does not license the states to pursue legislative experiments that violate the Constitution. And, in any area so closely touching on core First Amendment freedoms, Connecticut's decision to impose such a high barrier to participation in the public financing system is surely relevant when considering whether those barriers can survive the

heightened scrutiny that is appropriate in this context. Respondents never explain why Connecticut's uniquely burdensome qualification requirements are necessary to protect the public fisc or prevent excessive political factionalism especially since the district court found that "it is more likely that favoring hopeless major party candidates over hopeless minor party candidates will result in a raid on the public fisc..." App.300a.

Nor do respondents dispute the fact that the contribution requirement discriminates on its face. Candidates who satisfy the contribution requirement are not funded equally. The grants for minor-party and petitioning candidates are substantially less -- unless they cross the 20 percent mark for a full grant. The purported justification for holding minor-party and independent candidates to a more difficult qualifying standard than the one that applies to major party candidates is based on the misunderstanding that the Court approved this approach in *Buckley*. But, as noted previously, *Buckley* rested on the understanding that public financing did not act as subsidy, but rather as a "substitute," for what the parties would raise privately, *id.* at 95 n.129, and thus minor parties were not "disadvantaged" by the system, 424 U.S.at 99. Unlike *Buckley*, the CEP's qualifying and grant distribution terms are discriminatory not only because the program's terms treat the parties differently, but because they "slant[ ] the political playing field in favor of major party candidates." App.261a-262a.

The CEP seeks to stimulate major party competition by subsidizing candidates who would not

otherwise have the resources to compete on a level playing field. App.224a, n.27 (summarizing legislative history) To ensure that minor parties do not encroach on the system, Connecticut adopted a standard twice as high as the one approved in *Buckley*, despite the parallel requirement that the candidate must make a preliminary showing of widespread public support by raising thousands of dollars in small dollar contributions, and even though the trial court found that the contribution requirement, by itself, would effectively filter out frivolous and hopeless minor party candidates. App. 310a-31a. Moreover, even if a handful of candidates do qualify, the grants are structured in a way that locks in the advantages of major-party candidates by providing only partial grants, and then making it almost impossible for the candidate to close the funding gap because they are hamstrung by a $100 contribution limit imposed as a condition of receiving the grant and by the minor party trigger provision. App. 287a-289a

Given all this, there can be no doubt that the statute as written, and as applied in the context of Connecticut's history of a party dominant state, departs from the model upheld in *Buckley* in every critical respect. The respondents' only answer is that the legislature's decision to determine the qualifying criteria and grant amounts is entitled to discretion. *Buckley*, however, does not give a state *carte blanche* to devise a system that so demonstrably tilts the field in favor of the major parties.

IV. THE MINOR PARTY TRIGGER PROVISION IS PROPERLY BEFORE THE COURT

As asserted in the petition, the barriers to minor party participation in Connecticut's campaign finance system are reinforced by the CEP's minor party trigger provision, which further tilts the playing field against minority party candidates and thus cannot be reconciled with either *Buckley* or *Davis*. Under this provision, minor party contributions that reach a threshold level trigger an additional public grant to participating major party candidates that can be twice as large as the amounts raised by the minor party. App. 33a The district court found that this provision discourages minor party candidates from participating, or even attempting to participate, in the CEP. App 287a-289a. The respondents do not seriously challenge this characterization of how this provision operates. Instead, they argue that there are prudential considerations why the Court should not intervene. In addition, the respondents argue that the issue is unrelated to the issue currently before the Court in *McComish v. Bennett*, 611 F.3d 510 (9th Cir. 2010), *cert. granted*, __ S.Ct. ___ (Nov. 29, 2010) (No. 10-239). Neither of these arguments has merit.

The intervenor-respondents argue that the constitutionality of the minor party trigger provision is not properly before the Court because it was not raised or decided below. That assertion is incorrect. Plaintiffs prevailed on this issue in the district court. App. 287a-289a. The state-respondents specifically raised the issue on appeal. Petitioners then filed their response and, in a sub-section addressed solely

to this provision, explicitly argued that it unjustifiably discriminated against minor party candidates by serving as a "strong incentive to avoid raising contributions or spending [their] own money in excess of the applicable qualifying contribution minimum, whether or not that candidate hopes to become eligible for the CEP." *Appellees' Brief* at 90-91.[3] Petitioners further argued that once this provision was triggered, minor party candidates who qualified for partial grants could not realistically close the funding gap because they were bound by the $100 contribution limit. *Id.* The trial court found that this provision alone and in combination with the other provisions of the statute reinforces the statute's discrimination and "severely burden minor party candidates' political opportunity." App. 287a-289a.

The Second Circuit did not address either of these issues in its opinion. Its failure to do so, however, cannot justify leaving intact a provision whose legitimacy is called into question by the holding in *Davis*, and which involves an issue currently before the Court in *McComish*. That case involves the application of *Davis* to the trigger provisions contained in Arizona's campaign finance law. Recognizing that the legitimacy of these types of trigger mechanisms is in doubt, the respondents strain unsuccessfully to make the case that Connecticut's minor party trigger provision is unrelated to the matching fund provisions in

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[3] Even respondents appear to concede that the issue was raised below by quibbling instead over whether petitioners placed their objection in the appropriate section of their brief below (as deemed by respondents)

McComish. If anything, the Connecticut provision is significantly more onerous. In Arizona, participating candidates receive a 1:1 match once a non-participating opponent exceeds the initial public grant. The triggering event under the CEP occurs once a minor candidate has raised only a small fraction of the amount of money his publically financed opponent is allowed to spend on the election, at which point the full amount of the supplemental grant is paid. App. 287a-289a. This yields a more than 2:1 match.

Contrary to the respondents' argument, the Second Circuit's failure to address the operation of the minor party trigger provision provides a separate but related basis for review of this case. At a minimum, the final decision in this case should be held pending a final decision in *McComish*.

CONCLUSION

For the reasons stated above and in the petition, the writ of certiorari should be granted.

Respectfully submitted,

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